SUPREME COURT OF THE UNITED STATES.

No. 226.

JOHN A. BLANCHARD, COMPLAINANT AND APPELLANT,

VS.

NATHANIEL J. BROWN, ADMINISTRATOR OF THE ESTATE OF BENJAMIN F. BROWN, DECEASED, NATHANIEL J. BROWN, ET AL., HEIRS OF THE SAID BENJAMIN F. BROWN, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

GOVERNMENT PRINTING OFFICE.

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1 Pleas in the circuit court of the United States of America for the northern district of Illinois, sitting in chancery at Chicago, before the Hon. Thomas Drummond, district judge of said district, and in the absence pro tempore of the Hon. David Davis, one of the justices of the Supreme Court of the United States, sole judge of said circuit court, on Monday, the eighth day of August, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-ninth year.

WILLIAM H. BRADLEY, *Clerk.*

John A. Blanchard
vs.
Nathaniel J. Brown, administrator of the estate of Benjamin F. Brown, deceased, Nathaniel J. Brown, William S. Brown, Calvin Jenks, Annis A. Jenks, Daniel B. Brown, Maria Leek, Joseph Brown, Sarah J. Brown, Lemuel Brown, Edward A. Brown, and Hannah B. Janes, heirs of the said Benjamin F. Brown.

Northern District of Illinois, *ss:*

Be it remembered, that on the twenty-ninth day of September, in the year of our Lord one thousand eight hundred and sixty-two, come John A. Blanchard, complainant, by Messrs. Gallup & Hitchcock, solicitors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his bond for costs and his bill of complaint against Benjamin F. Brown, defendant; which said bond and bill are in the words and figures following, to wit:

United States of America, *Northern District of Illinois, ss:*

Circuit court, October term, A. D. 1863.

2 John A. Blanchard
vs. } In chancery.
Benjamin F. Brown.

I enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, I hereby agree and stipulate that execution may issue against any property for any costs taxed against him.

Dated the twenty-ninth day of September, A. D. 1862.

CHAS. HITCHCOCK.

Endorsed: Filed Sept. 29th, A. D. 1862.

WM. H. BRADLEY, *Clerk.*

In the circuit court of the United States for the seventh circuit and northern district of Illinois.

To the honorable judges of said court in chancery sitting:

Humbly complaining showeth unto your honors your orator, John A. Blanchard, who is a citizen and resident of the State of Massachusetts, that on the fifteenth day of August, in the year of our Lord one thousand eight hundred and forty-five, one Nathaniel J. Brown was the owner in fee of the south third of the west half and the south two thirds of the east half of block twelve in the school section addition to Chicago, in the county of Cook and State of Illinois.

3 That in the June special term, in the year of our Lord one thousand eight hundred and forty-six, in the circuit court of Cook County, in the State of Illinois, by the consideration and judgment of said court, one Josiah Strong recovered against the said Nathaniel J. Brown the sum of fifty-five dollars and twenty-five cents, for the damage which he had sustained as well by the non-performance of his promises by the said Brown as for the costs and charges by the said Strong about his suit in that behalf expended, which were adjudged to the said Strong in and by said court, whereof the said Brown stands convicted, as by the record of said judgment in the office of the clerk of said court, reference being thereto had, and to which, for greater certainty, your orator prays leave to refer, will more fully appear.

That in the November special term, in the year of our Lord one thousand eight hundred and forty-five, of the Cook County court, by the consideration and judgment of said court, one Horatio O. Stone recovered against the said Brown the sum of ninety-four dollars and thirty-three cents, as well for the damages by him sustained as for his costs and charges by him about his suit in that behalf expended, which were adjudged to the said Stone in and by the said court, whereof the said Brown stands convicted as by the record of said judgment in the office of the clerk of the said court, reference being thereto had, will more fully appear.

That in the October special term, in the year of our Lord one thousand
4 eight hundred and forty-six, of the Cook County court, by the consideration and judgment of said court, one Jacob R. Bates recovered against the said Brown the sum of sixty-eight dollars and two cents, as well for the damages by him sustained as for his costs and charges by him about his suit in that behalf expended, which were adjudged to the said Bates in and by the said court, whereof the said Brown stands convicted, as by the record of said judgment in the office of the clerk of said court, to which you orator prays leave to refer, will more fully appear.

That in the October special term, in the year of Lord one thousand eight hundred and forty-six, of the Cook County court, by the consideration and judgment of said court, Charles H. Lyman and Henry A. Stillman recovered against the said Brown the sum of four hundred and sixty-two dollars and ninety-two cents, as well for the damages which they had sustained as for the costs and charges by them about their suit in that behalf expended; which were adjudged to the said Lyman and Stillman in and by the said court, and whereof the said Brown stands convicted, as by the record of said judgment in the office of the clerk of said court, to which your orator prays leave to refer, will more fully appear.

And your orator further shows that on or about the fifteenth day of April, in the year of our Lord one thousand eight hundred and forty-seven, the said plaintiffs in the said judgments, for the purpose of obtaining satisfac-
5 tion thereof, sued out executions upon each of the same, and delivered
them to the sheriff of Cook County aforesaid, and by virtue of which the said sheriff levied upon the premises aforesaid. And on the twenty-sixth day of April, in the year of our Lord eighteen hundred and forty-eight, sold the same as the property of the said Brown to the said Lyman and Stillman for the sum of five hundred dollars. And that afterwards, to wit, on the first of September, in the year eighteen hundred and forty-nine, the said sheriff conveyed the title acquired by said sale to the said Charles H. P. Lyman and Henry A. Stillman, by his deed of that date.

And your orator further shows unto your honors that afterwards, to wit, on the twenty-fifth day of March, in the year of our Lord eighteen hundred and fifty, the said Henry A. Stillman and Catherine S., his wife, conveyed their interest in said premises to the said Charles H. P. Lyman by deed.

And afterwards, on the seventh day of May, in the year of our Lord eighteen hundred and fifty-two, the said Charles H. P. Lyman conveyed the said premises by deed to one Thomas Hoyne, who afterwards, by deed bearing date January eighteenth, eighteen hundred and fifty-three, conveyed the same to Luther L. Mills, Walter N. Mills, and Royal A. B. Mills. And afterwards, to wit, on the seventh day of March, in the year of our Lord eighteen hundred and fifty-four, the said Royal A. B. Mills and Eliza N., his wife, conveyed their interest in said premises by deed to the said Luther L.
6 Mills and Walter N. Mills, and afterwards, on the fifteenth day of June, in the year of our Lord eighteen hundred and fifty-eight, the said Luther L. Mills and Walter N. Mills and Caroline J., wife of the said Walter N. Mills, conveyed the said premises to your orator, to the record of all which deeds your orator, for greater certainty, prays leave to refer.

And your orator further shows that immediately on the acquisition of his title as aforesaid, he took, has since maintained, and now holds, actual and exclusive possession of the said premises.

Your orator further shows that before the rendition of either of said judgments hereinbefore recited, to wit, on the fifteenth day of August, in the year of our Lord one thousand eight hundred and forty-five, in the Cook County court, by the consideration and judgment of said court, one George W. Hart recovered against the said Nathaniel J. Brown the sum of five hundred and seven dollars and seventy-five cents for the damages which he had sustained, and also the costs and charges by him about his suit in that behalf expended, which were adjudged to the said Hart in and by the said court, and whereof the said Brown stands convicted, as by the record of said judgment in the office of the clerk of said court, to which your orator prays leave to refer, will more fully appear.

And your orator further shows that afterwards, to wit, on the sixteenth day of August last aforesaid, the said Hart, for the purpose of ob-
7 taining satisfaction of said judgment, sued out a writ of fieri facias upon the same, and caused it to be delivered to the sheriff of Cook County aforesaid, who afterwards, to wit, on the tenth day of February, in the year of our Lord one thousand eight hundred and fifty-two, returned it unsatisfied, and that the said Hart, on the day last aforesaid, sued out an alias writ of fieri facias, which was also delivered to said sheriff, under and by virtue of which said sheriff levied upon, and on the thirty-first day of March, in the year last aforesaid, sold the premises hereinbefore described to Calvin Jenks for the sum of seventy-one dollars and twenty cents.

And your orator further shows unto your honors that on the twentieth day of October, in the year of our Lord one thousand eight hundred and fifty-three, Cyrus P. Bradley, then sheriff of said Cook County, gave his deed to the said Calvin Jenks, conveying the title acquired at the sale last mentioned, and that on the eighteenth day of August, in the year of our Lord one thousand eight hundred and fifty-five, the said Calvin Jenks sold and conveyed said premises to one Benjamin F. Brown, who is a citizen of the State of Illinois, and a resident of said district, and who your orator prays may be made defendant hereto.

And your orator shows unto your honors that the sale aforesaid, under said judgment in favor of the said George W. Hart, is as against your orator fraudulent and void, and that your orator in justice and equity
8 ought to be allowed to redeem therefrom.

And your orator alleges, by way of illustration of the fraud of such sale and the title acquired by said defendant thereby, the following facts and circumstances:

First. That on or about the ninth day of February, in the year of our Lord one thousand eight hundred and fifty-two, and nearly seven years after the rendition of said judgment, and after the premises aforesaid had greatly increased in value, and more than four years after the sale upon the writs of fieri facias first above recited, the said judgment debtor, Nathaniel J. Brown, with the fraudulent intent to defeat the title under which your orator claims the fee in said premises, and not with the intent in good faith to pay or cause to be paid said judgment, applied to Messrs. Arnold & Lay, who had been the attorneys of said Hart, for the purchase of said judgment.

That said Brown suggested "that there were some old remnants of his affairs that might possibly be worth something to somebody, and that some benefit might accrue to somebody from them," and entered into negotiation professedly on behalf of one Calvin Jenks, of Owego, in the State of New York, who is, as your orator is informed and believes, a brother-in-law of the said judgment debtor, Nathaniel J. Brown; that as the result of such negotiations, and without the authority of said Hart, or his assent thereto, an agreement was entered into between the said judgment debtor, Brown, and said Arnold & Lay, in the words and figures following:

9 G. W. Hart
vs. } Judgment, $507 75, Aug., 1845.
N. G. Brown.

We hereby agree, in consideration of fifty dollars received of Calvin Jenks, of Owego, N. Y., that we will endeavor to procure an assignment of above judgment to said Jenks, and that in mean time we will hold and use the same for benefit of said Jenks, he paying all costs and expenses of any proceedings to collect the same, and at his request and costs we will discharge the same in full. If anything shall be realized on said judgment after this date, said Jenks to have benefit thereof.

Feb'y 9, 1852.

ARNOLD & LAY, *Att'ys for Geo. W. Hart.*

Your orator is informed and verily believes that whatever money was paid upon the execution of said agreement was paid by the judgment debtor, the said Nathaniel J. Brown.

Second. Your orator alleges that in pursuance of such arrangement, and with the fraudulent purpose of divesting and defeating the title under which your orator holds and claims the fee, the said Brown caused the sale of said premises on a writ of fieri facias issued upon said judgment in favor of said Hart, and purchased and paid for the same, professing to act for the said Calvin Jenks

Third. Your orator shows unto your honors that although a writ of fieri facias had been issued on said judgment in favor of said Hart, on the sixteenth of August, A. D. 1845, yet the same was not returned to the
10 court from which it issued, until the tenth of February, A. D.
1852, a space of nearly seven years from its date, and nearly four years after the sale on the judgments under which your orator claims title, and after the arrangement of the said judgment debtor, Nathaniel J. Brown, to obtain control of the said judgment of the said George W. Hart. And your orator submits that the purchaser upon such prior sale, and under whom your orator claims, had a right to presume that such execution had been satisfied in full.

Fourth. And your orator further shows that in order to conceal the fact of such sale, and to defeat the right of redemption therefrom, as your orator believes, the said Nathaniel J. Brown caused such sale to be made at an unusual place, to wit, at the sheriff's office, and the certificate thereof to be withheld from the record until such right of redemption was lost by lapse of time, and filed the same on the twenty-eighth day of October, in the year of our Lord one thousand eight hundred and fifty-three, and also caused the writ of fieri facias upon which such sale was made to said Jenks not to be returned to the office of the court from which it issued until the tenth day of July, in the year of our Lord one thousand eight hundred and fifty-eight, a space of six years after such sale.

Fifth. And in further illustration of the fraud aforesaid your orator shows
that the sale of said premises was made to the said judgment debtor
11 Brown, professing to act for the said Jenks, for a grossly inadequate
price. That said premises were sold for the sum of seventy-one dollars, whereas they were at that time worth at least the sum of four thousand dollars. And that at the same time, and on the same execution, other lands of said Brown worth at least the sum of seven thousand dollars, were sold for forty dollars. And your orator submits that such price was so greatly inadequate that it is evidence of fraud in such sale.

Sixth. And your orator further avers that said block was at the time of such sale partly subdivided and wholly capable of subdivision, and that the same would have sold for a better price if it had been offered in parcels, and yet the same was sold en masse without division, contrary to the statute in such case made and provided.

Your orator further shows unto your honor that said Jenks at the time of his purchase of said premises at such sheriff's sale, had and from thence hitherto has had full notice of all and every irregularity in such sale and in proceedings subsequent thereto. And your orator also charges that the said defendant at the time of his purchase from the said Jenks, had and from thence hitherto has had like notice of the irregularity of said sheriff's sale, and the proceedings subsequent thereto.

Your orator also shows that the said defendant, Benjamin F. Brown, is a
brother of the said Nathaniel J. Brown, and acquired his pretended
12 title by a deed of the said Jenks, dated August 18, A. D. 1855, and
with full notice of the matters hereinbefore stated and charged, and at the same time and as a part of the same transaction, as your orator believes, took an assignment of the said judgment of the said George W. Hart from the said Jenks, in the words and figures following, to wit:

In consideration of the sum of one hundred dollars to me this day paid, the receipt whereof is hereby acknowledged, I have assigned, set over, and sold the within judgment to B. F. Brown, together with all the profits and benefits to be derived therefrom.

Berkshire, New York, August 18, 1855.

[SEAL.] CALVIN JENKS.

Signed, sealed, and delivered in presence of—
DANIEL L. JENKS.
EMILY C. JENKS.

And afterwards caused execution to be issued thereon by his precipe, as follows:

Cook Co. c't of com pleas.

GEO. W. HART
vs.
NATH'L J. BROWN.
} Judgment, $507 75, August, 1845.

The clerk will please issue execution in above case, and oblige
GILBERT C. WALKER, *Att'y for B. F. Brown.*

13 And is now pursuing divers speculations therewith to your orator unknown.

And your orator would long since have prayed your honors for relief in the premises, but that, although actual possession was taken of said premises and maintained by the grantors thereof to your orator in the summer of 1853, and has since been maintained by such grantors and your orator, yet no attempt was made by the said defendant to assert his fraudulent title as aforesaid until the twentieth day of December, in the year of our Lord one thousand eight hundred and fifty-eight, or thereabouts, when a suit in ejectment was commenced on the law side of this court by the said defendant against your orator, which suit is still pending and undecided.

And your orator further shows that the commencement of such suit was, by reason of the fraudulent contrivances aforesaid, his first notice of the sale of said premises under the said judgment of said Hart, and that he has relied upon and asserted the facts set forth in this bill of complaint as a defence in said suit at law. But your orator is advised by counsel that it is doubtful whether he can have full and adequate relief at law, and that by a court of chancery such matters are properly cognizable and relievable.

And your orator further shows unto your honors that he has offered to
redeem from said sale and to pay to the said defendant, Brown, the
14 full sum of money paid at said sale for said premises, and interest
thereon from the day of sale at the rate of ten per cent. per annum,
and all costs and charges, and that said defendant has refused to accept the same.

And your orator well hoped that the said defendant would have accepted the offers of your orator to redeem from said sale, as in justice and equity he ought to have done.

But now, so it is, may it please your honors, that the said defendant, combining and confederating with divers persons, at present unknown to your orator, whose names when discovered he prays may be inserted herein with apt words to charge them as parties hereto, and contriving how to wrong and injure your orator in the premises, absolutely refuses to comply with such requests, and pretends that, &c.

All which actings, doings, pretences, and refusals are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises. In consideration whereof, and forasmuch as your orator can only have adequate relief in a court of equity, where matters of this nature are properly cognizable and relievable, to the end, therefore, that the said defendant may without oath, (his answer under oath being hereby expressly waived,) to the best and utmost of his knowledge, remembrance, information, and belief, full, true, direct, and perfect answer
15 make to all and singular the matters aforesaid, and that as fully as if
the same were here repeated and he distinctly interrogated thereto.

And your orator prays that the said sale under the said judgment of said Hart may be set aside and declared null and void; that your orator may be let in to redeem said premises; that the defendant may be decreed to convey, quitclaim, and release to your orator all title acquired by and under such sale, and for such other and further relief in the premises as the nature of the circumstances may require and to your honors may seem meet.

May it please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable court, to be directed to the said Benjamin F. Brown, commanding him, by a certain day and under a certain penalty therein to be inserted, to be and appear before your honors, at the court-room, in Chicago, and then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience. And your orator will ever pray, &c.

JOHN A. BLANCHARD,
By CHAS. HITCHCOCK.

GALLUP & HITCHCOCK, *Solicitors*.

Commonwealth of Massachusetts, *County of Suffolk, ss:*

16 John A. Blanchard, being duly sworn, deposes and says that he is the complainant in the above cause, and that he has read the above bill subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and that as to those matters he believes it to be true.

JOHN A. BLANCHARD.

Subscribed and sworn to before me this 22nd day of September, A. D. 1862.

GEO. T. ANGELL,
Notary Public in and for said Suffolk County, in the State of Massachusetts.

State of Massachusetts, *County of Suffolk, City of Boston, ss:*

I, Geo. T. Angell, a notary public in and for the county of Suffolk aforesaid, duly commissioned and qualified as such by the governor and under the laws of Massachusetts, do certify that in Boston, in said Suffolk, on this twenty-second day of September, A. D. 1862, John A. Blanchard subscribed and swore to the foregoing affidavit in my presence and before me.

Witness my hand and notarial seal, at Boston aforesaid, this Sept. 22, 1862.

[SEAL.] GEO. T. ANGELL,
Notary Public in and for said Suffolk.

Endorsed: Filed Sept. 29, 1862.

WM. H. BRADLEY, *Cl'k.*

17 On the same day, to wit, the 29th day of September, A. D. 1862, a writ of subpœna issued out of said clerk's office against said defendant; which said writ, together with the memorandum thereto attached and the return of the marshal thereon, is in the words and figures following, to wit:

United States of America, *Northern District of Illinois, ss:*

The United States of America to Benjamin F. Brown, greeting:

We command you, and every of you, that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of November next, to answer the bill of complaint of John A. Blanchard, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States of America, at Chicago aforesaid, this twenty-ninth day of September, in the year of our Lord one thousand eight hundred and sixty-two, and of our independence the eighty-seventh.

[SEAL.] WM. H. BRADLEY, *Clerk.*

18 *Memorandum.*

The above-named defendant is notified that unless he shall enter his appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against him as confessed and a decree entered accordingly.

W. H. BRADLEY, *Clerk.*

Northern District of Illinois, *ss:*

Know all men by these presents that I have appointed, and by these presents do appoint, W. Frank my true and lawful deputy to execute the annexed writ (John A. Blanchard *vs.* Benjamin F. Brown) and to make true return thereon according to law.

[SEAL.] J. R. JONES,
United States Marshal of the Northern District of Illinois.

I have, this first day of October, A. D. 1862, executed the annexed writ (John A. Blanchard *vs.* Benjamin F. Brown) by leaving a true copy in the hands of Benjamin F. Brown therein named.

J. R. Jones, United States marshal of the northern district of Illinois, by W. Frank, special deputy, being first duly sworn, deposes and says that he served the annexed writ as stated in the foregoing return.

Sworn to before me this day of , A. D. 186 .

W. FRANK.

Endorsed: Filed Oct. 29th, A. D. 1862.

WM. H. BRADLEY, *Clerk.*

19 On this day, to wit, the 12th day of March, A. D. 1863, come said complainant, by his solicitors, and filed in said clerk's office his bill of revivor in said entitled cause, which is in the words and figures following, to wit:

United States of America, *Northern District of Illinois, ss:*

To the honorable judges of the circuit court of the United States for the northern district of Illinois, in chancery sitting:

Complaining, shows unto your honors your orator, John A. Blanchard, who is a citizen of the State of Massachusetts and a resident thereof, that on the twenty-ninth day of September, in the year of our Lord one thousand eight hundred and sixty-two, your orator exhibited his bill of complaint in this honorable court against Benjamin F. Brown, and that said Brown was duly served with process of subpœna, and divers other proceedings were had in said cause. And your orator further showeth unto your honors that the said Benjamin F. Brown departed this life on or about the nineteenth day of December, in the year aforesaid, and left Nathaniel J. Brown, William S. Brown, Calvin Jenks, and Annis A. Jenks, who are citizens of the State of Illinois; Daniel B. Brown, Maria Leek, Joseph Brown, and Sarah J. Brown, who are citizens of the State of Michigan; Lemuel Brown, who is a citizen of the State of Iowa; Edward A. Brown, who is a citizen of the State
20 of Kansas, and Hannah B. Janes, who is a citizen of the State of Ohio, his heirs-at-law, and succeeding to the estate in the land in said bill described; that further, on the sixteenth day of February, in the year of our Lord one thousand eight hundred and sixty-three, the said Nathaniel J. Brown was, by the county court of Cook County, appointed the administrator of the estate of the said Benjamin F. Brown, and took upon himself the burden of the administration thereof.

And the said suit having abated by the death of the said Benjamin F. Brown, your orator is advised that he is entitled to have the same, and their proceedings therein revived against the said Nathaniel J. Brown, William S. Brown, Calvin Jenks, Annis A. Jenks, Daniel B. Brown, Maria Leek, Joseph Brown, Sarah J. Brown, Lemuel Brown, Edward A. Brown, and Hannah B. Janes, heirs of the said Benjamin F. Brown, and restored to the condition in which he was at the time of the death of the said Benjamin F. Brown.

To the end, therefore, that the said suit may stand revived against the said Nathaniel J. Brown, William S. Brown, Calvin Jenks, Annis A. Jenks, Daniel B. Brown, Maria Leek, Joseph Brown, Sarah J. Brown, Lemuel Brown, Edward A. Brown, and Hannah B. Janes, your orator prays your honors to grant him the people's writ of subpœna to revive and answer, issuing out of and under the seal of this honorable court, to be directed to said Nathaniel J. Brown as administrator as aforesaid, and to the said Nathaniel J. Brown, William S. Brown, Calvin Jenks, Annis A. Jenks, Daniel B. 21 Brown, Maria Leek, Joseph Brown, Sarah J. Brown, Lemuel Brown, Edward A. Brown, and Hannah B. Janes, as heirs as aforesaid, thereby commanding them, at a certain day and under a certain penalty to be therein limited, personally to be and appear before your honors in this honorable court, then and there to answer the premises and to show cause, if they can, why the said suit and the proceedings therein had should not stand and be revived against them and be in the same plight and condition as the same were in at the time of the abatement thereof; and further, to stand to and abide to such order and decree in the premises as to your honors shall seem meet. And your orator will ever pray, &c.

GALLUP & HITCHCOCK, *Compl't's Sol'rs.*

Endorsed: Filed March 12, 1863.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the first day of July, A. D. 1863, came Nathaniel J. Brown and others, and filed in said clerk's office their answers in said entitled cause; which said answers are in the words and figures following, to wit:

United States circuit court northern, district of Illinois, as yet of the May term, 1863, in chancery.

22 John A. Blanchard, complainant,
vs.
Nathaniel J. Brown, administrator of the estate of Benjamin F. Brown, deceased, Nathaniel J. Brown, William S. Brown, Calvin Jenks, Annis A. Jenks, Daniel B. Brown, Maria Leeks, Joseph Brown, Sarah J. Brown, Lemuel Brown, Edward A. Brown, and Hannah B. Janes, heirs of the said Benjamin F. Brown, defendants.

The joint and several answers of Nathaniel J. Brown, administrator as aforesaid, Nathaniel J. Brown, William S. Brown, Daniel B. Brown, Maria Leek, Joseph Brown, Sarah J. Brown, Lemuel Brown, heirs of the said Benjamin F. Brown, as aforesaid, to the original bill of John A. Blanchard, complainant, against the said Benjamin F. Brown, defendant, and the bill of revivor of the said complainant against them and others defendants as aforesaid.

These defendants, now and all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or unto so much or such parts thereof as these defendants are advised is material for them to make answer unto, they answer 23 and say that they believe it to be true, as stated in said bill of complaint, that Nathaniel J. Brown was the owner of the undivided half of the premises in said bill described as the south third of the west half and the south two thirds of the east half of block twelve, in the school section addition to Chicago, in the county of Cook and State of Illinois, and that at the June special term, A. D. 1846, of the circuit court of Cook County, Illinois, Josiah Strong recovered a judgment against said Brown as stated in said bill, and that H. O. Stone recovered a judgment against said Brown at the term and for the amount stated in said bill, and that Jacob R. Bates recovered a judgment at the term and for the amount stated in said bill, and also that Charles H. Lyman and Henry A. Stillman recovered a judgment at the term and for the amount stated in said bill; but whether such proceedings were had upon said judgments as are set forth in said bill of complaint these defendants cannot say, and leave complainant to make such proof thereof as he may be advised is necessary.

These defendants, further answering, say that they have no knowledge of the conveyances stated in said bill to have been made by Henry A. Stillman and wife to Charles H. D. Lyman, and from said Lyman to Thomas Hoyne, and from said Hoyne to Luther L., Walter N., and Royal A. B. Mills, and by R. A. B. Mills and wife to Luther L. Mills and Walter N. Mills, and by Luther L. Mills and Walter N. Mills and wife to complainant, except what is stated in said bill of complaint, and so cannot admit or deny those statements in said bill, and they leave complainant to make such proof as he may
24 deem necessary of these allegations.

These defendants admit that complainant has possession of the premises described in said bill, but deny that he is by law entitled to retain it.

These defendants, further answering, say that they admit that George W. Hart recovered a judgment before any of the above judgments were entered at the August term, 1845, of the Cook County circuit court, for the sum stated in said bill, against N. J. Brown, and that said Hart sued out an execution on said judgment and made a sale of said premises to Calvin Jenks, who received a sheriff's deed of said premises, as stated in said bill of complaint; and these defendants insist that said sale was fairly made and conducted, and vested in said Jenks a good title to said premises.

And the said N. J. Brown, on his own knowledge, and the other defendants, on information and belief, answer and say that they deny all fraudulent intent and action in the several proceedings set out in said bill of complaint, and especially in procuring the assignment of the judgment of said Hart against said N. J. Brown; and these defendants deny that the agreement of Arnold & Lay, dated February 9th, 1852, to procure an assignment of said judgment from G. W. Hart, was made at the instance or request or with the knowledge of said N. J. Brown, or that he paid, or agreed to pay, any
25 money therefor, or that said N. J. Brown caused the sheriff's sale of said premises to be made on said judgment to said Jenks, or that he acted as agent of said Jenks to procure it to be made, nor have these defendants any knowledge or belief of the time when the writ of execution on said judgment was returned except from what is stated in said bill, nor when the sheriff's certificate of sale was filed in the recorder's office; and denying all fraud or knowledge of any fraudulent intent in these proceedings, these defendants call for full proof of all these allegations in said bill as to those matters. These defendants say they do not know what the value of said premises was at the time of the sale thereof on the Hart judgment and execution, but they believe the title to the same was then involved, and for that reason alone, so far as these defendants have any knowledge, information, or belief, the same were sold for so small a sum.

These defendants cannot of their own knowledge say, but on information and belief they deny, that either said Benjamin F. Brown or said Calvin Jenks had any, at the time of said conveyance by said Jenk to said Brown, notice or knowledge of any fraud, malconduct, irregularity, or other defect in any of the sheriff's proceedings for the sale of said premises; and for themselves they each and all deny all notice or knowledge of any fraud or irregularity in said proceedings.

26 These defendants admit that Benjamin F. Brown was a brother of N. J. Brown, and they admit that the said B. F. Brown acquired a title to said premises by a deed of the same, dated the 18th day of August, A. D. 1855, made by the said Calvin Jenks, who was then the owner in fee of said premises, and Annis A. Jenks, his wife, which was then duly executed, acknowledged, and delivered to the said Benjamin F. Brown, by which, in consideration of three thousand dollars then actually paid for the said conveyance by the said Benjamin F. Brown to the said Jenks, the said Jenks conveyed to said Brown all of said block twelve, (12,) school section addition to the town of Chicago, together with other lands and lots in said deed mentioned and described, as by s'd deed ready here in court to be produced will appear.

And these defendants insist by this their answer, as fully as they might by plea, that said Benjamin F. Brown took said deed and paid said consideration in good faith and without any notice or knowledge of any irregularity, defect, or fraud in any of the proceedings whereby said Jenks, or any of the parties under whom he claimed title, acquired their title to said premises. And so these defendants say that the title thus acquired by said Benjamin F. Brown was good and bona fide in law and equity, and ought not to be in any manner lessened or impeached by any or all of the matters set up in said bill of complaint; and these defendants, who are the heirs-at-law of said Benjamin F. Brown, are entitled to hold the said premises free from
27 all the attacks made thereon in said bill of complaint.

These defendants, further answering, believe it to be true, as stated in said bill of complaint, that said Jenks did assign the Hart judgment *vs.* N. J. Brown to Benjamin F. Brown, but whether an execution was afterwards issued on said judgment by direction of said B. F. Brown, or his attorney, these defendants cannot say, and leave complainant to make full proof thereof, if he can.

And these defendants, further answering, say that on the 20th day of December, in the year 1858, Benjamin F. Brown, against whom the original bill in this case was exhibited and filed, and who deceased on the nineteenth day of December, 1862, and from whom these defendants derive title by descent from said Benjamin F. Brown as his heirs-at-law to the premises in the bill in this cause set out and described, commenced an action of ejectment in his favor against the complainant in this cause in the circuit court of the United States for the northern district of Illinois for the recovery of the same identical premises described in the bill in this cause and claimed by the complainant; in which action of ejectment the said complainant appeared and pleaded the general issue, and then afterwards such proceedings were had in said action of ejectment, that at the October term, 1859, a verdict and judgment was recovered by the said Benjamin F. Brown against the said John A. Blanchard for the recovery of the aforesaid described
28 premises, and thereupon the said John A. Blanchard, complainant in this suit, on, to wit, the 7th day of April, 1860, moved for a new trial in said action of ejectment, which was granted by the court, and the said suit was reinstated on the docket of the court. And afterwards, at the December term, 1860, the said suit was brought to trial upon the merits before the court in which it was pending, and the said John A. Blanchard, defendant in that suit, set up in defence the same identical matters against the title of the said Benjamin F. Brown to the aforesaid premises as are alleged in the bill of complaint in this cause; and thereupon such proceedings were had in said cause that the said court in which said action of ejectment was pending on, to wit, the day of December, 1862, rendered judgment in favor of said Benjamin F. Brown against said John A. Blanchard for the recovery of the aforesaid premises in the bill in this cause described, which

judgment is in full force and effect and not in any manner reversed or impeached, as by the record thereof, now remaining in this honorable court, will on inspection fully and at large appear.

And these defendants aver that the said judgment is still in full force; that the matters in controversy and the real parties in interest were the same in said action at law as in this suit; that the whole merits of the case as stated by the bill were fully heard, tried, and determined in said action at law and
in a court of competent jurisdiction, and that said judgment was ob-
29 tained fairly and without fraud, covin, or misapprehension, or the
taking of undue advantage; and that no facts or matters are stated or alleged in the bill in this cause which complainant did not or might not have produced and had all due legal advantage of upon the the trial of said action of ejectment.

Therefore these defendants do insist that the said recovery and judgment at law in said suit of Benjamin F. Brown against complainant are a full and complete bar to all the relief prayed for by complainant against these defendants in and by said bill of complaint, and insist upon the same as fully as if the same had been specially pleaded to said bill.

And now having fully answered all the several matters set forth in said bill of complaint these defendants pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other cause or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

30 Chicago, July 1st, 1863.

SAMUEL W. FULLER, *Sol'r for s'd Defendants.*
SCAMMON, McCAGG & FULLER, *of Counsel.*

Endorsed: Filed July 1st, 1863.
WM. H. BRADLEY, *Clerk.*

The judge's certificate of evidence read on the trial of said cause and the evidence referred to in said certificate are in the words and figures following, to wit:

Judge's certificate of the evidence offered by the above-named parties on the hearing of said cause.

In circuit court of United States, northern district of Illinois.

JOHN A. BLANCHARD, compl't,
vs. } In chancery.
NATHANIEL J. BROWN *et als.*, def'ts.

I do hereby certify that on the hearing of the above-entitled cause the following admissions, stipulations, and testimony were offered and made by the said parties as evidence to be considered by the court in hearing and determining said cause:

I. It was admitted by both parties that Daniel B. Brown and Nathaniel J. Brown were, on the 26th day of July, 1836, the owners in fee of the premises in controversy; that on the 27th day of February, 1852, they made a deed of
them to Calvin Jenks, which was recorded in the proper office.
31 II. The complainant then offered and read in evidence the following
stipulation:

Circuit court of the United States, northern district of Illinois.

JOHN A. BLANCHARD
vs.
NATHANIEL J. BROWN, ADMINISTRATOR OF THE ESTATE of Benjamin F. Brown, deceased, Nathaniel J. Brown, William S. Brown, Calvin Jenks, Annis A. Jenks, Daniel B. Brown, Maria Leek, Joseph Brown, Sarah J. Brown, Lemuel Brown, Edward A. Brown, and Hannah B. Janes.
} Chancery.

It is hereby stipulated that upon the final hearing of the above cause the following facts, so far as they may be competent and necessary, shall be admitted as if they were proven, and may be used as evidence in said cause:

1. That on the fifteenth day of August, A. D. 1845, Nathaniel J. Brown was the owner in fee of an undivided half of the premises in question in this cause. That in the June special term, in the year 1846, in the circuit court of Cook County, Josiah Strong recovered a judgment for $55 25 against said Nathaniel J. Brown. That Horatio O. Stone recovered a judgment against said Brown at the November special term, A. D. 1845, of the Cook
County court, for $94 33. That Jacob R. Bates recovered a judgment
32 against said Brown at the October special term of the Cook County
court, in the year 1846, for $68 02. That Charles H. Lyman & Henry A. Stillman recovered a judgment against the said Brown at the October special term, A. D. 1846, of the Cook County court.

That on the 15th day of April, 1847, executions were issued on said judgments and delivered to the sheriff of Cook County, and by virtue of which the said sheriff levied upon the premises in the bill described, and on the 26th day of April, 1848, sold the same to the said Lyman & Stillman for $500, and that on the 1st of September, 1849, said sheriff conveyed the title acquired by said sale to the said Charles H. P. Lyman and Henry A. Stillman by deed of that date. That on the 25th day of March, 1850, the said Stillman and wife conveyed their interest in said premises to said Lyman, and on the 7th day of May, A. D. 1852, said Lyman deeded the same to Thomas Hoyne, who on the 18th of January, 1853, conveyed the same to Luther L. Mills, Walter N. Mills, and Royal A. B. Mills; and that on the 7th day of March, 1854, said Royal A. B. Mills and wife conveyed their interest to the said Walter N. Mills and Luther L. Mills; and that on the 15th day of June, 1858, the said Walter N. Mills and Luther L. Mills conveyed the said premises to the complainant. That upon the hearing it shall be taken that J. H. Rees has testified in this cause that the north third of said block twelve
was subdivided into five lots in 1847, and called Oliver's subdivision;
33 that in 1852 a subdivision was made of the middle third of the west
half of said block, and called Hamilton subdivision; that the part of said block not subdivided contains four acres, and was worth in 1852, at the time of the sheriff's sale under the judgment of George W. Hart *vs.* Nathaniel J. Brown, the sum of four thousand dollars, and could have been well subdivided. That the other lands sold on the execution on the judgment of Hart *vs.* Brown at the same sale for $40 were worth six or seven thousand dollars if the title thereto was good.

3. That execution was sued out on the said judgment of George W. Hart *vs.* Nathaniel J. Brown on the 16th of August, A. D. 1845, and was not returned to the clerk's office until the tenth of February, A. D. 1852, and that on said tenth of February an alias execution was sued out and the land in question sold to Calvin Jenks on the 31st of March following for the sum of $71 20. That the certificate was filed for record on the 28th of October, 1853, and the execution returned on the tenth of July, A. D. 1858.

4. That it shall be taken on the hearing that Walter N. Mills has testified in this cause that in July, 1853, the witness and Luther L. Mills and Royal A. B. Mills took possession of the premises described in complainant's bill, put a fence around it, had it surveyed, made a plat thereof, and that the fence has remained ever since, and that such possession was continued by them and the complainant up to his ejectment at the suit of B. T. Brown.

34 5. That at the time of the sale to Jenks, on the execution on the judgment of George W. Hart, it was usual for the sheriff to sell land at the court-house door and not at the sheriff's office, and that the sheriff's office and the court house door were upon opposite sides of a square or block in the city of Chicago; and that such sale was made at the sheriff's office.

SAM'L W. FULLER, *Solicitor for Def'ts.*
CHAS. HITCHCOCK, *Sol. for Com.*

III. The complainant then offered and read in evidence the following depositions, subject to the objections of defendants that the deposition of Anson B. Jenks was incompetent, as it was a disclosure of professional confidence between him and Benjamin F. Brown, deceased.

Depositions of Anson B. Jenks and Isaac N. Arnold, taken at Chicago, Illinois, before J. H. Thompson, commissioner, on the 23rd day of October, A. D. 1863, on behalf of complainant.

Int. 1st. What is your name, age, occupation, and place of residence?

Ans. My name is Anson B. Jenks; age, 28 years; occupation is that of attorney-at-law; and I reside in the city of Chicago.

35 Int. 2. Have you in your possession or under your control a written agreement on the part of Arnold & Lay to procure an assignment of a judgment of Geo. W. Hart against N. J. Brown, and purporting to have been executed on the 9th of February, 1852?

Ans. I have not.

Int. 3. Have you ever had such agreement in your possession?

Ans. I suppose I have had.

Int. 4. Did you make a copy of that agreement?

Ans. I did.

Int. 5. Will you look upon the written instrument handed you and state whether it is a copy of the original agreement which you say you suppose to have been in your possession?

Ans. It is a copy which I made of it. (The writing here shown witness is hereto annexed, marked Exhibit A, J. H. T.)

Int. 6. From whom did you receive that original instrument and when?

Ans. From N. J. or B. F. Brown, I don't remember which. It was about February, 1862, (1862.)

Int. 7. To whom did you deliver that instrument?

Ans. To the person who gave it to me, N. J. or B. F. Brown. I have searched among my papers and do not find it.

36 Int. 8. Was there any writing endorsed on the agreement at that time in your possession? and if yea, state if the writing now handed you is a copy of such endorsement.

Ans. There was, and this is a copy in my handwriting. (The writing shown witness and referred to is annexed, marked Exhibit B, J. H. T.)

Int. 9. Do you know the signature of Calvin Jenks? and if yea, state whether that endorsement was signed by him.

A. I do know the signature of Calvin Jenks, and believe that the endorsement was signed by him. This writing endorsed was returned with the other paper to N. J. or B. F. Brown.

Int. 10. In February, 1862, was you a partner of Gilbert C. Walker?

Ans. I was not.

Int. 11. Did Mr. Walker sign the precipe which is now handed you at your request?

Ans. He did not.

Int. 12. Is the signature to the precipe in the handwriting of Gilbert C. Walker?

Ans. It is.

Int. 13. In whose handwriting is the body of the precipe?

3 Ans. In mine.

Int. 14. From which of the Browns do you think you received those instruments, the paper purporting to be an agreement of Arnold & Lay and the endorsement.

Ans. It was B. F. Brown, I am sure.

Int. 15. What is your relation to Calvin Jenks and the relation of Calvin Jenks to N. J. and B. F. Brown?

Ans. I am the son of Calvin Jenks and N. J. and B. F. Brown are brothers-in-law of Calvin Jenks.

(It is admitted by the solicitor for the defendants, S. W. Fuller, esq., that the papers now produced and entitled Geo. W. Hart *vs.* N. J. Brown, 216, are the original files in the case of Hart *vs.* Brown, and he also states as evidence for the defendants in the case that they were offered in evidence by the complainant in this case on the trial of the suit at law between him and B. F. Brown, now deceased, which is admitted by solicitor for complainant if such facts are competent evidence upon the final hearing of this case.)

Cross-examination by S. W. Fuller, esq., sol'r for defendants.

Int. 1. At the time you made the copy of a paper purporting to be an
agreement made by Arnold & Lay as stated in your direct exami-
38 nation, did you know in whose handwriting the body of the paper
you copied was?

Ans. I did not.

Int. 2. Do you now know in whose handwriting it was?

Ans. I do not.

Int. 3. Did you then or did you now know the handwriting of Arnold & Lay, or either of them?

Ans. I did not then, and do not now.

Int. 4. Did you receive that paper from B. F. Brown, copy it and deliver it back to him, and acquire what other information you have stated in your direct examination respecting it as his counsel and legal adviser?

Ans. I did. I was at that time a practising attorney in the city of Chicago.

(Defendants' solicitor now objects to the competency of all the foregoing proof, on the ground that it is a privileged professional knowledge acquired by him while acting as the legal advisor of B. F. Brown, deceased.)

Re-examination by Chas. Hitchcock, esq.

Int. 6. Did you file the copy of the agreement purporting to have been
executed by Arnold & Lay, and the assignments endorsed thereon, in the
clerk's office of the superior court of Chicago, in the case of Hart *vs.*
39 Brown, and which you have identified as your handwriting?

Ans. I did not; Gilbert C. Walker filed it.

ANSON B. JENKS.

The exhibits marked A and B referred to in the foregoing deposition, and thereto attached, consist of a paper from the original files of the superior court of Chicago; which said paper, with the endorsements thereon, is in words and figures following, to wit:

4. That it shall be taken on the hearing that Walter N. Mills has testified in this cause that in July, 1853, the witness and Luther L. Mills and Royal A. B. Mills took possession of the premises described in complainant's bill, put a fence around it, had it surveyed, made a plat thereof, and that the fence has remained ever since, and that such possession was continued by them and the complainant up to his ejectment at the suit of B. T. Brown.

34 5. That at the time of the sale to Jenks, on the execution on the judgment of George W. Hart, it was usual for the sheriff to sell land at the court-house door and not at the sheriff's office, and that the sheriff's office and the court house door were upon opposite sides of a square or block in the city of Chicago; and that such sale was made at the sheriff's office.

SAM'L W. FULLER, *Solicitor for Def'ts.*
CHAS. HITCHCOCK, *Sol. for Com.*

III. The complainant then offered and read in evidence the following depositions, subject to the objections of defendants that the deposition of Anson B. Jenks was incompetent, as it was a disclosure of professional confidence between him and Benjamin F. Brown, deceased.

Depositions of Anson B. Jenks and Isaac N. Arnold, taken at Chicago, Illinois, before J. H. Thompson, commissioner, on the 23rd day of October, A. D. 1863, on behalf of complainant.

Int. 1st. What is your name, age, occupation, and place of residence?

Ans. My name is Anson B. Jenks; age, 28 years; occupation is that of attorney-at-law; and I reside in the city of Chicago.

35 Int. 2. Have you in your possession or under your control a written agreement on the part of Arnold & Lay to procure an assignment of a judgment of Geo. W. Hart against N. J. Brown, and purporting to have been executed on the 9th of February, 1852?

Ans. I have not.

Int. 3. Have you ever had such agreement in your possession?

Ans. I suppose I have had.

Int. 4. Did you make a copy of that agreement?

Ans. I did.

Int. 5. Will you look upon the written instrument handed you and state whether it is a copy of the original agreement which you say you suppose to have been in your possession?

Ans. It is a copy which I made of it. (The writing here shown witness is hereto annexed, marked Exhibit A, J. H. T.)

Int. 6. From whom did you receive that original instrument and when?

Ans. From N. J. or B. F. Brown, I don't remember which. It was about February, 1862, (1862)

Int. 7. To whom did you deliver that instrument?

Ans. To the person who gave it to me, N. J. or B. F. Brown. I have searched among my papers and do not find it.

36 Int. 8. Was there any writing endorsed on the agreement at that time in your possession? and if yea, state if the writing now handed you is a copy of such endorsement.

Ans. There was, and this is a copy in my handwriting. (The writing shown witness and referred to is annexed, marked Exhibit B, J. H. T.)

Int. 9. Do you know the signature of Calvin Jenks? and if yea, state whether that endorsement was signed by him.

A. I do know the signature of Calvin Jenks, and believe that the endorsement was signed by him. This writing endorsed was returned with the other paper to N. J. or B. F. Brown.

Int. 10. In February, 1862, was you a partner of Gilbert C. Walker?

Ans. I was not.

Int. 11. Did Mr. Walker sign the precipe which is now handed you at your request?

Ans. He did not.

Int. 12. Is the signature to the precipe in the handwriting of Gilbert C. Walker?

Ans. It is.

Int. 13. In whose handwriting is the body of the precipe?

3 Ans. In mine.

Int. 14. From which of the Browns do you think you received those instruments, the paper purporting to be an agreement of Arnold & Lay and the endorsement.

Ans. It was B. F. Brown, I am sure.

Int. 15. What is your relation to Calvin Jenks and the relation of Calvin Jenks to N. J. and B. F. Brown?

Ans. I am the son of Calvin Jenks and N. J. and B. F. Brown are brothers-in-law of Calvin Jenks.

(It is admitted by the solicitor for the defendants, S. W. Fuller, esq., that the papers now produced and entitled Geo. W. Hart *vs.* N. J. Brown, 216, are the original files in the case of Hart *vs.* Brown, and he also states as evidence for the defendants in the case that they were offered in evidence by the complainant in this case on the trial of the suit at law between him and B. F. Brown, now deceased, which is admitted by solicitor for complainant if such facts are competent evidence upon the final hearing of this case.)

Cross-examination by S. W. Fuller, esq., sol'r for defendants.

Int. 1. At the time you made the copy of a paper purporting to be an agreement made by Arnold & Lay as stated in your direct examination,
38 did you know in whose handwriting the body of the paper you copied was?

Ans. I did not.

Int. 2. Do you now know in whose handwriting it was?

Ans. I do not.

Int. 3. Did you then or did you now know the handwriting of Arnold & Lay, or either of them?

Ans. I did not then, and do not now.

Int. 4. Did you receive that paper from B. F. Brown, copy it and deliver it back to him, and acquire what other information you have stated in your direct examination respecting it as his counsel and legal adviser?

Ans. I did. I was at that time a practising attorney in the city of Chicago.

(Defendants' solicitor now objects to the competency of all the foregoing proof, on the ground that it is a privileged professional knowledge acquired by him while acting as the legal advisor of B. F. Brown, deceased.)

Re-examination by Chas. Hitchcock, esq.

Int. 6. Did you file the copy of the agreement purporting to have been executed by Arnold & Lay, and the assignments endorsed thereon, in the clerk's office of the superior court of Chicago, in the case of Hart *vs.*
39 Brown, and which you have identified as your handwriting?

Ans. I did not; Gilbert C. Walker filed it.

ANSON B. JENKS.

The exhibits marked A and B referred to in the foregoing deposition, and thereto attached, consist of a paper from the original files of the superior court of Chicago; which said paper, with the endorsements thereon, is in words and figures following, to wit:

Exhibit A, J. H. T.

Geo. W. Hart
vs. — Judgment, $507 75, Aug., 1845.
N. J. Brown.

We hereby agree, in consideration of fifty dollars, received of Calvin Jenks, of Owego, N. Y., that we will endeavor to procure an assignment of above judgment to said Jenks, and that in mean time we will hold and use the same for benefit of said Jenks, he paying all costs and expenses of any proceedings to collect the same. And at his request and cost we will discharge the same in full. If anything shall be realized on said judgment after this date, said Jenks to have benefit thereof.

Feb'y 9, 1852.

ARNOLD & LAY, *Att'ys for Geo. W. Hart.*

Exhibit B, J. H. T.

(This is a true copy of the original ass'ts.) In consideration of the
40 sum of one hundred dollars to us this day paid, the receipt whereof
is hereby acknowledged, I have assigned, set over and sold the within
judgment to B. F. Brown, together with all the profits and benefits to be derived therefrom.

Berkshire, New York, August 18, 1855.

[seal.] CALVIN JENKS.

Signed, sealed, and delivered in presence of—
Daniel L. Jenks.
Emily C. Jenks.

Assignment of judgment *vs.* N. J. Brown, in favor of Geo. W. Hart.

Endorsed: Filed Feb'y 21, 1862.

T. B. CARTER, *Clerk.*

41 Isaac N. Arnold, a witness of lawful age, being produced on the
part of complainant and sworn, deposes and testifies as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Isaac N. Arnold; age years. I reside in Chicago, and am an attorney-at-law.

Int. 2. Were you the attorney of George W. Hart in a suit at law against Nathaniel J. Brown, in 1845, in the Cook County court?

Ans. I was one of the firm of Arnold & Ogden, and afterwards Arnold & Lay, one of the attorneys in the case referred to. I obtained the judgment.

Int. 3. Will you state any conversation you may have had with the defendant, Nathaniel J. Brown, with reference to this judgment and proceedings upon it, and the time when such conversation, if any, took place?

Ans. So long a period has elapsed since the transaction that my recollection is somewhat indistinct. I had conversation either with N. J. Brown or Benj. F. Brown, or a Mr. Jenks, in regard to the judgment some time before the
issuing of the execution in 1852; some one of those gentlemen, perhaps
42 two of them, called at my office—I should think it was Mr. Jenks—
and suggested that possibly something might be realized out of some
remnants of N. J. Brown's property on the execution referred to. I replied, as nearly as I now remember, that the judgment had been standing a long time, and I regarded it as worthless; that I knew of nothing on which to levy, and if they could inform me of anything, I shall be glad; that the plaintiff was behind in the disbursements he should have made and fees, and if they could put me in the way of collecting something, I should be glad to avail myself of the information. Either Mr. Jenks or Mr. B. F. Brown remarked that he thought there was some property heavily encumbered, but

that the execution might be used to an advantage in perfecting a title to some heavily encumbered property, although it might be of no value to a third party or outsider, or something to that effect. I do not remember anything else, except that it was arranged that an execution should be issued.

Int. 4. Was the execution which you have in your hand, and dated February 10, 1852, issued in pursuance of that arrangement?

Ans. I presume it was.

Int. 5. Will you look at the memorandum, partly erased, "Brown to pay costs," and state in whose handwriting it was?

43 Ans. That is in my handwriting.

Int. 6. Who paid the costs upon that sale?

Ans. I do not think I know of my own knowedge. I did not pay them. They were paid to the sheriff in my absence, according to the best of my recollection.

Int. 7. Who paid you the money on the execution?

Ans. I think either Mr. Jenks or Mr. B. F. Brown.

Int. 8. Do you know when the sale was made?

Ans. I do not. I was not present at the sale.

Int. 9. Do you know where Hart was at the time of sueing out this execution?

Ans. I do not. I had not heard from him for a considerable time previous. I had written to him at Rochester, which was his last known place of residence, in regard to fees and disbursements, and had not received any reply.

Int. 10. Did you give to either of the Browns or to Jenks a written memorandum of the terms of the arrangement in regard to the judgment and exection?

Ans. I have an impression that I gave them such a memorandum.

Int. 11. Will you look at the paper now produced, and marked A,
44 J. H. T., and state whether it contains in substance the terms of the
agreement?

Ans. I do not think that any such agreement was executed, but it is possible that I am mistaken. My impression is that a paper somewhat similar to this was prepared, but that we declined to execute it. It is possible that I am mistaken. My impression is that the parties wanted me to give some agreement to discharge the judgment of record, but I did not feel at liberty to do it on the collection of so small a portion of the execution.

Int. 12. Did you have any communication with either of the Browns or Jenks at any subsequent time with reference to the judgment?

Ans. I had some conversation, but I do not recollect the particulars.

Int. 13. Upon refreshing your recollection by reference to the memorandum in your handwriting upon the execution, can you say whether it was Jenks or Brown who agreed to pay the costs on the execution?

Ans. From the terms of the memorandum, I think it was B. F. Brown. It is rather a matter of inference than recollection.

Int. 14. Did you have authority to give control of the judgment and execution to either of the Browns or Jenks?

Ans. I had no authority other than that of being the plaintiff's at-
45 torney of record. My impression is that about that time I wrote to
Mr. Hart, advising him that some party wanted to use this judgment,
and that he might realize $50 or $100 by transferring it to a third party. I have no recollection of receiving any reply.

ISAAC N. ARNOLD.

IV. Complainant then offered and read in evidence the transcript of the proceedings in case of George W. Hart *vs.* Nathaniel J. Brown, including execution issued August 16th, 1845, and execution issued February 10th, 1852, with the return thereon, in connection with the testimony of I. N. Arnold, above given.

The complainant read in evidence the original papers referred to and the copy of the judgment of said court in said last-mentioned cause; which said original papers and said copy of judgment are in the words and figures following, to wit:

State of Illinois, *Cook County ss:*

Cook County court, of the August term, in the year of our Lord one thousand eight hundred and forty-five.

George W. Hart, plaintiff in this suit, by Arnold & Ogden, his attorneys, complain of Nathaniel J. Brown, defendant, who was summoned, &c., 46 in a plea of trespass on the case on promises, for that whereas the said defendant heretofore, to wit, on the ninth day of May, in the year of our Lord one thousand eight hundred and forty-five, at Chicago, to wit, at Chicago, in said county of Cook, made his certain promissory note and then and there delivered the same to said plaintiff, in and by which said note said defendant, by the name and style and description of **N. J.** Brown, promised to pay to the order of said plaintiff, by the name, style, and description of George W. Hart, or order, on the ninth day of August, one thousand eight hundred and forty-five, five hundred dollars, with six per cent. interest per annum until paid, at his (meaning plaintiff's) office, for value received; by means whereof, and by force of the statute in such case made and provided the said defendant became liable to pay said plaintiff said sum of money mentioned in said note, and being so liable, in consideration thereof, then and there undertook and promised to pay the same to said plaintiff according to the tenor and effect, tone, intent, and meaning of said note, to wit, at the place aforesaid. And whereas, also, the said defendant afterwards, to wit, on the fourteenth day of August, in the year of our Lord one thousand eight hundred and forty-five, to wit, at Chicago, in said county, became and was indebted unto the plaintiff in a large sum of money, to wit, one thousand dollars, for money before that time lent and advanced to, and paid, laid out, end expended for said defendant by said plaintiff at said defendant's request, and for money before that time had and received by 47 said defendant to and for the use of said plaintiff; and also in the like sum for goods, wares, and merchandise before that time sold and delivered by said plaintiff to said defendant, at like special instance and request; and also in the like sum for the labor, care, and diligence of said plaintiff before that time done and performed by said plaintiff for said defendant, and at the like instance and request of said defendant, and being so indebted, said defendant, in consideration thereof, then and there undertook and promised to pay said plaintiff said last-mentioned sum of money when thereunto afterwards requested.

Yet the said defendant, not regarding his said promises and undertakings, but contriving, &c., although often requested so to do, has not paid said plaintiff either of said sums of money, or any part thereof, but so to do has hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of said plaintiff of one thousand dollars. And therefore he brings suit, &c.

ARNOLD & OGDEN, *Att'ys for Plaintiff.*

Copy of note and account sued upon.

$500. Chicago, Ill's, *May 9th, A. D.* 1845.

On the ninth day of August, A. D. 1845, for value received, I do hereby promise to pay George W. Hart, or order, five hundred dollars and cents, with six per cent. interest per annum until paid, at his office.

N. J. BROWN.

Endorsed: Filed Aug. 15, 1845.

JAS. CURTIS, *Cl'k.*

48 Know all men by these presents that whereas the subscriber, justly indebted to George W. Hart upon a certain promissory note, bearing even date herewith, for the sum of five hundred dollars and cents, drawing six per cent. interest per annum until paid, and due on the 9th August, day of August, A. D. 1845: Now, therefore, in consideration of the premises, I do hereby make, constitute, and appoint N. B. Judd, or any attorney of any court of record, to be my true and lawful attorney, irrevocable, for me and in my name and stead to enter my appearance before any justice of the peace or any court of record in theUnited States or Territories of America, at any time after the said note becomes due, to waive the service of process, and confess a judgment in favor of the said George W. Hart or his assigns upon the said note for the above sum, or for as much as shall appear to be due, according to the tenor and effect of said note, and interest thereon to the day of entry of said judgment, and to release all errors that may intervene in entering up said judgment or in issuing execution thereon. Hereby ratifying and confirming all which my said attorney may do by virtue hereof.

Witness my hand and seal, at Chicago, this 9th day of May, A. D. 1845.

N. J. BROWN. [seal.]

Cook County, *ss:*

I. N. Arnold, being sworn, says that he is acquainted with the handwriting of Nathaniel J. Brown, and he has no doubt that the signature to the
49 foregoing letter of attorney was executed by him, said Brown.

I. N. ARNOLD.

Subscribed and sworn to this 15th day of August, A. D. 1845.

J. CURTISS, *Cl'k.*

Cook County court.

George W. Hart
vs.
Nathaniel J. Brown.

And the said defendant, Nathaniel J. Brown, comes and waives the service of process, enter his appearance, and says that he cannot deny the action of the said plaintiff, and but that he, the said defendant, did promise in manner and form as the said plaintiff has in his declaration alleged, and but that the plaintiff has sustained damage by reason of the non-fulfillment of said promises to the sum of five hundred and seven dollars and seventy-five cents, and he, the said defendant, does hereby consent that a judgment be rendered in favor of said plaintiff for said sum, together with his costs and charges, during the present term of this court, and hereby release and forever waive and discharge all errors in the proceedings or entering up of such judgment and in issuing execution thereon.

GEORGE MANIERRE, *Att'y for Def't.*

50 George W. Hart
vs. } Judgment by confession.
Nathaniel J. Brown.

This day comes the said plaintiff, by Arnold, his attorney, and files his declaration and cognovit herein against the said defendant; and thereupon comes the said defendant, by Manierre, his attorney in fact, duly authorized and empowered for that purpose, and waives service of process and releases all errors in the entering up of this judgment, and says he cannot deny the action of the said plaintiff, nor but that he did undertake and promise in manner and form as the said plaintiff hath above thereof complained against him, nor but that the said plaintiff hath sustained damages by reason of the non-performance of said promises and undertakings to the amount of $507 75.

Therefore it is considered that the said plaintiff do have and recover of the said defendant his damages of $507 75, as aforesaid acknowledged, together with his costs and charges by him about his suit in this behalf expended, and that he have execution therefor.

STATE OF ILLINOIS, *County of Cook, ss:*

I, Walter Kimball, clerk of Cook County court of common pleas, in and for said county, do hereby certify the foregoing to be a true copy of an order made and entered of record in said court on the 15th day of Au-
51 gust, in the year of our Lord eighteen hundred and forty-five, in the case of George W. Hart *vs.* Nathaniel J. Brown.

Certified under my hand and the seal of said court, this 4th day of March, A. D. 1858.

[SEAL.] WALTER KIMBALL, *Clerk.*

STATE OF ILLINOIS, *County of Cook, ss:*

The people of the State of Illinois to the sheriff of said county, greeting:

We command you that of the lands and tenements, goods and chattels of Nathaniel J. Brown, defendant, in your county, you cause to be made the sum of five hundred and seven dollars and seventy-five cents, which George W. Hart, plaintiff, lately in the Cook County court of said county, at a term thereof begun and held at Chicago, in said county, on the first Monday of August inst., past, recovered against the said defendant, and which by the said court was adjudged to the said plaintiff for his damages. And also the further sum of two dollars and thirty-one and ¼ cents, which were adjudged to the said plaintiff for his costs and charges in that behalf expended, whereof the said defendant is convicted, as appears to us of record. And have you these moneys ready to render to the said plaintiff for his damages and costs aforesaid, and make return of this writ, with an endorsement thereon in what manner you shall have executed the same, in ninety days from the date hereof.

Witness the Honorable Hugh T. Dickey, judge of our said court,
52 and the seal thereof, at Chicago, in said county, this 16th day of August, A. D. 1845.

[SEAL.] J. CURTISS, *Clerk.*

Endorsed: Cook County court, August T., 1845. George W. Hart *vs.* Nathaniel J. Brown. Fi. fa.

Da's	$507 75
P. C.	2 31¼
D. C.	1 43¾
	511 50

Int. from Aug. 15, 1845.
Rec'd Aug't 18, 1845, at 8 o'clock a. m.

S. J. LOWE, *Sh'ff Cook Co., Ill's.*

Filed Feb. 10, 1852. W. KIMBALL, *Cl'k.*

State of Illinois, *County of Cook, ss:*

The people of the State of Illinois to the sheriff of said county, greeting:

We command you, as we have before commanded, that of the lands and tenements, goods and chattels of Nathaniel J. Brown, defendant, in your county, you cause to be made the sum of five hundred and seven dollars and seventy-five cents, which George W. Hart, plaintiff, lately, in the Cook County
court of common pleas of said county, at a term thereof begun and
53 held at Chicago, in said county, on the first Monday of August, A. D.
1845, last past, recovered against the said defendant, and which by
the said court was adjudged to the said plaintiff for his damages. And also the further sum of three dollars and forty-six and ¼ cents which were adjudged to the said plaintiff for his costs and charges in that behalf expended, whereof the said defendant was convicted, as appears to us of record. And have you these moneys ready to render to the said plaintiff for his damages and costs aforesaid, and make return of this writ, with an endorsement thereon in what manner you shall have executed the same, in ninety days from the date hereof.

Witness Walter Kimball, clerk of our said court, and the seal thereof, at Chicago, in said county, this 10th day of Feb'y, A. D. 1852.

[L. S.] WALTER KIMBALL, *Clerk.*

Endorsed: Cook County court of common pleas. Als. fi. fa. No. 2,863. Case No. 216. Fee Book A, 50. Date, 10 Feb, 1852. Return 10 May. George W. Hartt *vs.* Nathaniel J. Brown.

Damages	$507 75
Plaintiff's cost	3 46¼
Defendants' cost	2 53¾
	513 75

The sheriff will collect interest from 15 August, 1845. Received this writ at 11½ o'clock a. m., Feb'y 10th, 1852.

54 By virtue of the annexed execution I did, on the tenth day of February, 1852, levy upon the undivided one half of block seven, in Kinzie's addition to Chicago; block twelve in the school section addition to Chicago; the southwest quarter of section seven, in township thirty-seven north, of range thirteen east of the third principal meridian; the northwest quarter of section four, in township thirty-seven north, of range fourteen east of said meridian; the east half of the northeast quarter of section thirty, in township thirty-seven north, of range eleven east of said meridian; the undivided half of the west half of the southwest quarter of section three, in township thirty-nine north, of range thirteen east of said meridian, and the east half of the northeast quarter of section eight, in township forty north, of range fourteen east of the said meridian. And on the 31st day of March, 1852, between the hours of nine in the morning and the setting of the sun of the same day, at the sheriff's office, in Chicago, in Cook County, (the time and place aforesaid having been duty advertised according to law,) I did sell at public vendue the aforesaid premises, in separate parcels, as follows, to wit: The said undivided half of block seven to Calvin Jenks, of Owego, New York, for ten dollars; the said block twelve to the said Jenks, for seventy-one dollars and twenty cents; the said southwest quarter of section seven to the said Jenks, for five dollars; the said northwest quarter of section four to the said Jenks, for five dollars; the said east half of the northeast quarter of section
thirty, to the said Jenks, for five dollars; the said undivided half of
55 the west half of the southwest quarter of section three to the said
Jenks, for ten dollars; and the said east half of the northeast corner

of section eight to the said Jenks for five dollars, said sums being the highest and best bids offered for said lots or parcels of land and premises respectively, and amounting to one hundred and eleven and 20-100 dollars, which sum was duly paid to me.

And after deducting my fees on execution	$5 20
And the costs of court as per fee bills	6 00
I have paid the balance to the plaintiff's attorney	100 00
	111 20

And I return the said execution satisfied for one hundred dollars and all costs, and no more.

WM. L. CHURCH, *Sh'r'ff.*

Received of William L. Church, sheriff of Cook County, one hundred dollars on account of the damages on the within execution by certificate of purchase of premises sold hereon to Calvin Jenks 31st March, 1852.

ARNOLD & LAY, *Plff's Att'ys.*

Mr. Brown to pay costs.

Endorsed: Filed July 10th, 1858.

W. KIMBALL, *Cl'k.*

The defendants then offered in evidence the following:

1. To support their defence of a former recovery, the record and proceedings in an action of ejectment, brought by Benjamin F. Brown, deceased, from whom the defendants derive title to the premises in controversy by descent, as his heirs-at-law against John A. Blanchard, the complainant, on the law side of this court, as follows:

56 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court-room, in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, judge of said district, presiding, on Monday, the eighth day of December, in the adjourned October term of said court, in the year of our Lord one thousand eight hundred and sixty-two, and of our independence the eighty-seventh year.

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

BENJAMIN F. BROWN
vs. } Ejectment.
JOHN A. BLANCHARD.

Benjamin F. Brown, plaintiff in this suit, who is a citizen of the State of Wisconsin, puts in his place Messrs. Scammon & Fuller, his attorneys, against John A. Blanchard, defendant in this suit, who is a citizen of the State of Massachusetts, in a plea of trespass and ejectment.

John A. Blanchard, defendant in this suit, puts in his place Messrs. Cornell, Waite & Jameson, his attorneys, at the suit of said plaintiff, in plea aforesaid.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered, that on the thirtieth day of December, A. D. 1858, came said plaintiff, by his attorneys, and filed in the office of the clerk of the 57 circuit court of the United States of America for the northern district of Illinois, at Chicago, in the said district aforesaid, his bond for costs in said entitled cause, also his declaration in ejectment against said defendant, together with a notice attached thereto; which said bond, declaration, and notice are in the words and figures following, to wit:

Circuit court of the United States, northern district of Illinois.

Benjamin F. Brown
vs.
John A. Blanchard.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, I hereby agree and stipulate that execution may issue against my property for any costs taxed against him.

Dated this 30th day of December, A. D. 1858.

P. B. LULL.

Endorsed: Filed Dec'r 30th, 1858.

WM. H. BRADLEY, *Clerk.*

United States of America, *Northern District of Illinois, ss:*

United States circuit court, December term, A. D. 1858.

58 Benjamin F. Brown, who is a citizen of the State of Wisconsin, by Scammon & Fuller, his attorneys, complains of John A. Blanchard, who is a citizen of the State of Massachusetts, in a plea of trespass and ejectment, for that whereas heretofore, to wit, on the first day of November, in the year eighteen hundred and fifty-eight, (A. D. 1858,) at and within the county of Cook and said State of Illinois, the said plaintiff was possessed as of his own demesne in fee simple of a certain tract or parcel of land, with the appurtenances, situate in the county of Cook, in the said State of Illinois, and described as follows, to wit, block twelve (12) in the school section addition to the city of Chicago, in said county of Cook and State of Illinois, which said premises exceed in value the sum of five hundred dollars, and which the said plaintiff claims in fee simple. And the said plaintiff being so possessed thereof, the said defendants afterwards, to wit, on the same day and year last aforesaid, entered into the said premises and ejected the said plaintiff therefrom, and from the time last aforesaid has unlawfully withheld, and does now unlawfully withhold, from the said plaintiff the possession thereof, to the damage of the said plaintiff of the sum of five hundred dollars. And therefore he brings suit, &c.

SCAMMON & FULLER, *Att'y for Plaintiff.*

To John A. Blanchard, the above-named defendant:

59 You are hereby notified that the declaration with a copy of which you are now herewith served, and to which this notice is attached, will be filed in the circuit court of the United States for the northern district of Illinois, on the first day of the December term thereof, A. D. 1858, and that upon filing the same a rule will be entered, requiring you to appear and plead to the said declaration within twenty days after the entry of said rule, and that if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises specified in said declaration.

Dated this 26th day of November, A. D. 1858.

SCAMMON & FULLER, *Att'y for Plaintiff.*

Endorsed: Filed Dec. 30th, 1858.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the thirtieth day of December, A. D. 1858, came said defendant, by his attorneys, and filed in the office of the clerk of the circuit court his plea in said entitled cause; which said plea is in the words and figures following, to wit:

United States of America, *ss:*

Circuit court of U. S., northern dist. of Illinois.

John A. Blanchard
ads.
Benjamin F. Brown.
} Ejectment for bl'k 12, school section ad'n Chicago.

And now comes the defendant, John A. Blanchard, by Cornell, Waite & Jameson, his attorneys, and says he is not guilty of the said supposed trespass and ejectment whereof he is charged in the said declaration. And of this he puts himself upon the country, &c.

60 CORNELL, WAITE & JAMESON,
Att'ys for Defendant.

Endorsed: Filed Dec'r 30th, 1858.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the thirty-first day of December, in the December term of said court, A. D. 1858, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

Benjamin F. Brown
vs.
John A. Blanchard.
} Ejectment.

Now comes the plaintiff, by Messrs. Scammon & Fuller, his attorneys, who file his declaration in ejectment against the defendant, together with a notice thereto attached, and also an affidavit of due service of a true copy of said declaration and notice upon the defendant.

On this day, to wit, the twenty-second day of October, in the adjourned October term of said court, in the year of our Lord one thousand eight hundred and fifty-nine, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

Benjamin F. Brown
vs.
John A. Blanchard.
} Ejectment.

Now come the parties, by their respective attorneys, and upon issue joined thereupon come a jury of good and lawful men, to wit: Charles Douglass, John B. Dusenbury, William A. Fraser, Patrick Higgins, G. H. Jenkins, 61 D. O. B. Adams, William Goldir, W. J. Sheppard, George G. Merrick, Clement Drew, Nathan Justin, G. G. Chilcote, who were duly elected, tried, and sworn well and truly to try said issue, and after hearing the evidence and arguments of counsel, and receiving instructions from the court, the jury retired to consider of their verdict, and after a short absence the jury returned into court with the following verdict, to wit:

We, the jury, find the defendant guilty of unlawfully withholding from the possession of the plaintiff the south two thirds of the east half, and the south one third of the west half of block twelve, of the premises described in the plaintiff's declaration, as follows, to wit, a certain tract or parcel of land, with the appurtenances, situate in the county of Cook, in the said State of Illinois, and described as follows, to wit, block twelve (12) in the school section addition to the city of Chicago, in said county of Cook and State of Illinois. We, the jury, also find the estate established in the plaintiff on trial to be an estate in fee simple, and assess his damages at the sum of one cent. Whereupon the defendant, by his attorneys, moves the court for a new trial herein.

On this day, to wit, the fourth day of November, in the adjourned October term, A. D. 1859, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

BENJAMIN F. BROWN
vs. — Ejectment.
JOHN A. BLANCHARD.

62 Now comes on to be heard the motion of the defendant heretofore made herein for a new trial of this cause, and after hearing the arguments of counsel, the court takes the same under advisement.

On this day, to wit, the first day of December, in the adjourned October term, A. D. 1859, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

BENJAMIN F. BROWN
vs. — Ejectment.
JOHN A. BLANCHARD.

The court having fully considered and being now fully advised upon the motion of the defendant for a new trial of this cause heretofore submitted herein, overrule said motion. It is thereupon considered and adjudged by the court that the plaintiff have and recover of the defendant possession of the said described real estate and premises, according to the force, form, and effect of his said recovery, and that he have a writ of possession therefor, and that he also have and recover of the defendant the said sum of one cent, his damages so as aforesaid assessed by the jury, together with his costs by him about his suit in this behalf expended, amounting to the sum of thirty-three dollars and seventy cents, and that he have execution therefor.

63 On this day, to wit, the ninth day of April, in the adjourned March term, A. D. 1860, of said court, in the record and proceedings thereof in said entitled cause is the following, to wit:

BENJAMIN F. BROWN
vs. — Ejectment.
JOHN A. BLANCHARD.

Now comes the defendant, by his attorney, and moves the court to set aside and vacate the judgment entered herein on the first day of December last, and for a new trial of the same under the statute; and it appearing to the court that all the taxed costs herein have been paid by the defendant, it is ordered by the court that the said judgment be set aside and vacated, the cause reinstated upon the docket, and a new trial of the same awarded.

On this day, to wit, the sixth day of February, A. D. 1861, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

BENJAMIN F. BROWN
vs. — Ejectment.
JOHN A. BLANCHARD.

Now come the parties, by their attorneys, and upon issue joined by agreement they waive the intervention of a jury, and for a trial put themselves upon the court, and after hearing a part of the evidence, the hour of
64 adjournment having arrived, the further hearing is postponed until to-morrow morning.

On this day, to wit, the seventh day of February, A. D. 1861, in the December term, A. D. 1860, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

BENJAMIN F. BROWN
vs. — Ejectment.
JOHN A. BLANCHARD.

Now come again the parties by their attorneys, and after hearing further testimony, the hour of adjournment having arrived, the further hearing is postponed until to-morrow morning.

On this day, to wit, the eighth day of February, A. D. 1861, in the December term of said court, A. D. 1860, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

BENJAMIN F. BROWN
vs. } Ejectment.
JOHN A. BLANCHARD.

Now come again the parties, by their attorneys, and after hearing the *the* concluding evidence and arguments of counsel the court takes time to consider.

On this day, to wit, the twenty-fourth day of November, in the adjourned October term of said court, A. D. 1862, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

BENJAMIN F. BROWN
65 *vs.* } Ejectment.
JOHN A. BLANCHARD.

This cause having been heretofore submitted to the court, and written arguments having been furnished agreeably to leave given, and the court having fully considered and being fully advised of the premises, finds the defendant guilty of unlawfully withholding from the possession of the plaintiff the real estate and premises described in the plaintiff's declaration, as follows: Block twelve (12) in the school section addition to the city of Chicago, in the county of Cook and State of Illinois; and the court also finds the estate established in the plaintiff on trial to be an estate in fee simple, and assess the damages at the sum of one cent.

On this day, to wit, the eighth day of December, in the adjourned October term, A. D. 1862, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

BENJAMIN F. BROWN
vs. } Ejectment.
JOHN A. BLANCHARD.

Now comes the plaintiff, by his attorney, and moves the court for judgment on the findings heretofore entered in this cause. It is thereupon considered and adjudged by the court that the plaintiff do have and recover of and from the defendant possession of the real estate and premises described in his declaration according to the force, form, and effect of his said recovery, and that he have a writ of possession therefor, and that he also have and recover of and from the defendant the sum of one cent in damages, together with the costs and charges herein, amounting to the sum of forty-
66 one dollars and forty-nine cents; and that he have execution therefor.

2. The defendant, further to show what matters were litigated in that action of ejectment, offered the following parol testimony of the evidence given in the trial in that action.

I. N. Arnold:

Am attorney-at-law in this city. My partner and myself had a judgment, Hart *vs.* Brown, some years ago; can't state date. We could never collect it; could find no property. It lay for several years with nothing realized. Plaintiff had left the State. I see memorandums in my handwriting, præcipe for an execution in that case. I think Nathaniel J. Brown called at my office and suggested that there were some old remnants of his affairs that might be worth something, and some benefit might accrue from an execution. In consequence an execution issued, of what he said. Don't know who paid costs. Dont think we paid the costs. Hart owed us; had paid nothing in this case. I thought the judgment worthless. Can't say, but think this is the execution. Think memorandum, "Mr. Brown pay costs," is in my handwriting. Don't think we had correspondence with Hart about this judgment. Know Benjamin F. Brown; did know him in 1852. Don't think Nathaniel J. Brown said anything to me about Benjamin F. Brown. Don't think I was at the sale, or know who was there. Have seen Benjamin F. Brown often. Nathaniel J. Brown lives in Lemont, Cook 67 County, and did in 1852, but am not sure. Hart lived then in New York, as I think. I think I have seen Hart, but am not sure. Receipt on back of execution in my handwriting. I think money was paid by Mr. Brown.

James H. Reese:

Know records of recorder's office. From abstract made at our office, block 12, north part, or about one third of block, was subdivided into five lots. I think rest of block was then subdivided, June 24th, 1858; original made, June, 1857. In 1847 a subdivision was made, called Oliver's subdivision, about one third of north part of block. In 1852 Hamilton's subdivision was made of middle one third of west half of block. Rest not subdivided in June, 1858; south one third of west half and south two thirds of the east half. In 1852 it was worth $1,000 an acre; 4 7-100 acres in it. It could be subdivided well. This estimate is based on a good title, and no encumbrance of the entire. Other property claimed in Hart execution I think was worth $6,000 or $7,000, supposing it to be good title and an entire interest therein. Know of no plat, recorded or otherwise, prior to 1847, by Oliver. There had been sales of lots in this block, but no occupancy that I know of.

67½ To the admission of this evidence the complainant objected, but the court overruled the objection and heard the testimony.

3. The defendants then offered in evidence the transcript of the proceedings in the case of George W. Hart *vs.* Nathaniel J. Brown (the same offered by the complainant, together with the same execution) and a sheriff's deed, made by C. P. Bradley, sheriff, &c., to Calvin Jenks, as follows:

68 *Sheriff's deed.—Cyrus P. Bradley, sheriff of Cook County, to Calvin Jenks.*

Whereas George W. Hart did, at the August term, A. D. eighteen hundred and forty-five, of the Cook County court, for the county of Cook, in the State of Illinois, recover a judgment against Nathaniel J. Brown for the sum of five hundred and seven dollars and seventy-five cents and costs of suit, upon which judgment an execution was issued, dated on the tenth day of February, A. D. eighteen hundred and fifty-two, directed to the sheriff of Cook County to execute, and by virtue of said execution William L. Church, then sheriff of said county, levied upon the lands hereinafter described, and the same were struck off and sold to Calvin Jenks, of Owego, New York, he being the highest and best bidder therefor, and the time and place of the sale thereof having been duly advertised according to law: Now, therefore, know all by this deed that I, Cyrus P. Bradley, sheriff of said county of Cook, (and successor of the said WilliamL. Church, late sheriff as aforesaid,) in consideration of the premises, have granted, bargained, and sold, and hereby convey to the said Calvin Jenks, his heirs and assigns, the following described tracts of land, to wit: The undivided one half of block seven 68 in Kinzie's addition to Chicago, block twelve, in the school section addition to Chicago; the southwest quarter of section seven, in township thirty-seven north, of range thirteen east of the third principal meridian; the northwest quarter of section four, in township thirty-seven north, of range fourteen east of said meridian; the east half of the northeast quarter of section thirty, in township thirty-seven north, of range eleven east of said meridian; the undivided half of the west half of the southwest quarter of section three, in township thirty-nine north, of range thirteen east of said meridian, and the east half of the northeast quarter of section eight, in township forty north, of range fourteen east of said meridian. To have and to hold the said described premises, with all the appurtenances thereto belonging, to the said Calvin Jenks, his heirs and assigns, forever.

Witness my hand and seal this twentieth day of October, in the year of our Lord one thousand eight hundred and fifty three.

[SEAL.] CYRUS P. BRADLEY, *Sheriff of Cook County.*

STATE OF ILLINOIS, *County of Cook, ss:*

I, Louis D. Hoard, clerk of the circuit court of Cook County, do certify that Cyrus P. Bradley, sheriff of Cook County, personally known to me to be the real person whose name is subscribed to the within annexed deed, this day acknowledged before me that he executed the said deed as such sheriff voluntarily and freely, for the uses and purposes therein set forth.

Given under my hand and the seal of said court this twenty-eighth
70 day of October, eighteen hundred and fifty-three.

[SEAL.] L. D. HOARD, *Clerk.*

No. 45,609.

STATE OF ILLINOIS, *County of Cook, ss:*

This deed was filed for record the 28th day of October, 1853, and duly recorded in Book 66 of Deeds, page 123.

L. D. HOARD.

The defendants then offered in evidence the deposition of D. L. Jenks, with the deed from Calvin Jenks thereto attached.

Deposition of Daniel L. Jenks, taken at Owego, New York, November 11th, 1863, before Charles A. Munger, commissioner, on behalf of defendants.

Interrogatory first. What is your name, age, occupation, and place of residence?

First. To the first interrogatory saith: My name is Daniel L. Jenks; my age is forty-three years; my occupation is that of a hotel keeper; my place of residence is the village of Owego, county of Tioga and State of New York.

71 Interrogatory second. Do you know the parties, plaintiffs and defendants, in the caption to these interrogatories mentioned, or either and which of them, and how long have you known them respectively?

Second. To the second interrogatory he saith: I do not know the complainant nor the def't Edward A. Brown. I know all the other parties to this action and have known them some fifteen years.

Interrogatory third. Look at the deed now shown you, purporting to be made by Calvin Jenks and Annis A. Jenks, his wife, to Benjamin F. Brown, dated August 18th, 1855, and recorded February 8th, 1856, in Book 104 of Deeds of Cook County, Illinois, page 387, and state whether you know and did at the time of the date of said deed know the parties to it.

Third. To the third interrogatory he saith, (the deed hereto annexed was then shown to the witness:) At the time of the sale of this deed I know the parties to it.

Interrogatory fourth. State whether you witnessed said deed as a subscribing witness, and whether your name appears to it as such witness.

Fourth. To the fourth interrogatory he saith: I witnessed said deed as a subscribing witness, and my name appears to it as such witness.

Interrogatory fifth. State whether the consideration of three thou-
72 sand dollars named in said deed was or not paid by the grantee, Ben-
jamin F. Brown, to the grantor, Calvin Jenks, at the time said deed
was made, and if yea, how it was paid and your means of knowledge.

To the fifth interrogatory he saith: The consideration of three thousand dollars named in said deed was paid by the grantee, Benjamin F. Brown, to the grantor, Calvin Jenks, at the time the deed was made. It was paid in cash. My means of knowledge are that I saw the money paid, and that I counted it myself.

Cross-interrogatories to be propounded to said witness.

1st. Was there any other transaction between the parties at that time than the execution of the deed; and if yea, what was it?

To the first cross-interrogatory he saith: I do not remember that there was any other transaction between the parties at that time than the execution of this deed.

2d. Was there any conversation about the title to the land, or how it was acquired?

To the second cross-interrogatory he saith: I have no recollection of any conversation about the title to the land or how it was acquired.

3d. Was it said by either party that it was acquired under a judgment against N. J. Brown, or was anything said about such judgment; and if so, what?

To the third cross-interrogatory, he saith, I do not recollect that it
73 was said by either party that it (the title) was acquired under a judg-
ment against N. J. Brown, nor that anything was said about such
judgment.

DANIEL L. JENKS.

This indenture, made the eighteenth day of August, one thousand eight hundred and fifty-five, between Calvin Jenks and Annas A. Jenks, his wife, of Berkshire, County of Tioga and State of New York, of the first part, and Benjamin F. Brown, of the State of Illinois, of the second part, witnesseth, that the said parties of the first part, in consideration of three thousand dollars to them duly paid, have sold, and by these presents do grant and convey to the said party of the second part, his heirs and assigns, forever, all the following described pieces or parcels of land, to wit: block number twelve (12) of the school section addition to the town of Chicago, containing about four hundred and twenty feet square of ground, more or less; also the undivided one half of block number seven (7) Kinzie's addition to the town of Chicago, being about forty-four feet front by two hundred and twenty feet rear, as will more fully appear by reference to the records of Cook County, State of Illinois, all the above-described land lying and being in the county of Cook and State of Illinois, with the appurtenances, and all the estate, title, and interest of the said parties of the first part therein.

In witness whereof, the said parties of the first part have hereunto
74 set their hands and seals the day and year above written.

CALVIN JENKS. [SEAL.]
ANNAS A. JENKS. [SEAL.]

In presence of—
DANIEL L. JENKS.
EMILY C. JENKS.

STATE OF NEW YORK, *Tioga County, ss:*

On the eighteenth day of August, 1855, before me, the subscriber, personally came Calvin Jenks and Annas A. Jenks, whom I know to be the grantors described in and who executed the annexed instrument, and acknowledged that they had executed the same. And the said Annas A. Jenks on a private examination, separate and apart from her said husband, acknowledged that she had executed the same freely and without any fear or compulsion of her said husband.

HIRAM BLISS, *Justice.*

75 STATE OF NEW YORK, *Tioga County, Clerk's Office, ss:*

I, Leroy W. Kingman, clerk of said county, and also clerk of the courts in and for said county, do hereby certify that Hiram Bliss, whose name is subscribed to the certificate of proof or acknowledgment of the annexed instrument, and thereon written, was at the date of said certificate of proof or acknowledgment a justice of the peace in and for said county, duly commissioned and sworn and duly authorized to take the same. And further, that I am well acquainted with the handwriting of the said justice, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine, and that the same is in due form and in accordance with the laws of the State of New York.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said courts and county, at Owego, this 22d day of August, 1855.

[SEAL.] L. W. KINGMAN, *Clerk.*

Endorsed: No. 67,176. Recorded in the clerk's office of the county of Cook the 8th day of February, 1856, in Book—*recorded in Book* 104, Deeds, on page 387, &c.

L. D. HOARD, *Clerk.*

76 And I do further certify that the foregoing was all the evidence offered by the respective parties.

THOMAS DRUMMOND, *Judge.*

Endorsed : Filed August 8th, 1864.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the sixth day of June, A. D. 1864, in the record of the proceedings of said court in said cause is the following entry, to wit:

JOHN A. BLANCHARD
vs.
NATHANIEL J. BROWN, ADMINISTRATOR OF THE ESTATE of Benjamin F. Brown, deceased, Nathaniel J. Brown, *et al.*
} Chancery.

Now come the parties, by their solicitors, and by agreement this cause is set down for hearing on the bill, answer, replication, proofs, and exhibits filed, and after hearing the same until the hour of adjournment without concluding the same, the further hearing is postponed until to-morrow morning.

On this day, to wit, on the seventh day of June, A. D. 1864, in the record of the proceedings of said court in said cause is the following entry, to wit:

JOHN A. BLANCHARD
vs.
NATHANIEL J. BROWN, ADMINISTRATOR OF ESTATE OF Benjamin F. Brown, deceased, Nathaniel J. Brown, Wm. S. Brown, *et al.*
} Chancery.

77 Now come again the parties, by their respective solicitors, and after hearing the concluding arguments of the counsel, the court not being now sufficiently advised in the premises, takes time to consider.

On this day, to wit, on the 8th day of August, A. D. 1864, in the record of the proceedings of said court in said entitled cause is the following entry, to wit:

JOHN A. BLANCHARD
vs.
NATHANIEL J. BROWN, ADMINISTRATOR OF THE ESTATE OF Benjamin F. Brown, deceased, Nathaniel J. Brown, *et al.*
} Chancery.

This cause having been heretofore submitted to the court upon the bill, answer, replication, proofs, and exhibits filed, and upon arguments of the counsel of the respective parties, and the court having considered the same and being now fully advised in the premises dismisses, the bill at the complainant's costs.

It is thereupon considered and adjudged by the court that the defendant have and recover of the complainant his costs and charges by him about his defense in this behalf expended, amounting to the sum of dollars and cents, and that he have execution therefor. And the complain-
78 ant, by his counsel, thereupon prays an appeal to the Supreme Court, which is granted, conditioned that he enter into the bond in the sum of five hundred dollars to the defendants within twenty days, on the security to be approved by the court.

On this day, to wit, on the 19th day of August, A. D. 1864, came said complainant, by his solicitor, and filed in said clerk's office his appeal bond in said cause; which said bond is in the words and figures following, to wit:

Supreme Court of the United States.

JOHN A. BLANCHARD
vs.
NATHANIEL J. BROWN, ADMINISTRATOR OF THE ESTATE OF Benjamin F. Brown, deceased, Nathaniel J. Brown, William S. Brown, Calvin Jenks, Annis A. Jenks, Daniel B. Brown, Maria Leek, Joseph Brown, Sarah J. Brown, Lemuel Brown, Edward A. Brown, and Hannah B. Janes, heirs of the said Benjamin F. Brown.
} In error.

Know all men by these presents that we, John A. Blanchard and Arnold Bigelow, are held and firmly bound unto the above-named Nathaniel
79 J. Brown, administrator of the estate of Benjamin F. Brown, deceased, Nathaniel J. Brown, William S. Brown, Calvin Jenks, Annis A. Jenks, Daniel B. Brown, Maria Leek, Joseph Brown, Sarah J. Brown, Lemuel Brown, Edward A. Brown, and Hannah B. Janes, heirs of the said Benjamin F. Brown, in the sum of five hundred dollars, to be paid to them, their heirs, executors, or administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the 19th day of August, A. D. 1864.

Whereas the above-named John A. Blanchard hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the eighth circuit and northern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above-named John A. Blanchard shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this

obligation to be void; otherwise, the same shall be and remain in full
80 force and virtue.

JOHN A. BLANCHARD. [SEAL.]
ARNOLD BIGELOW. [SEAL.]

Approved. THOMAS DRUMMOND.

Endorsed: Filed August 19th, 1864.

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States within and for said northern district of Illinois, do hereby certify the foregoing transcript to be a true, full, and perfect copy from the record of all the proceedings which have been had in said court in said chancery cause of John A. Blanchard against Nathaniel J. Brown, administrator of the estate of Benjamin F. Brown, deceased, Nathaniel J. Brown, *et al.*, heirs, &c., as the same now remains in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said northern district, this thirtieth day of November, A. D. 1864.

[SEAL.] WM. H. BRADLEY, *Clerk.*

81 Supreme Court of the United States, December term, A. D. 1864.

JOHN A. BLANCHARD, appellant,
vs.
NATHANIEL J. BROWN, ADMINISTRATOR OF THE ESTATE of Benajmin F. Brown, deceased, Nathaniel J. Brown, William S. Brown, Calvin Jenks, Annis A. Jenks, Daniel B. Brown, Maria Leek, Joseph Brown, Sarah J. Brown, Lemuel Brown, Edward A. Brown, and Hannah B. Janes, heirs of the said Benjamin F. Brown, appellees.

And now comes the said John A. Blanchard, by Charles Hitchcock, his solicitor, and says there is manifest error in the foregoing record in this, to wit:

First. The court erred in refusing to allow said plainant to redeem according to the prayer of said bill.

Second. That the court erred in refusing to set aside the sale according to the prayer of said bill.

Third. That the court erred in dismissing said bill.

CHARLES HITCHCOCK, *Solicitor for Complainant.*

Filed December 12, 1864.

SUPREME COURT OF THE UNITED STATES

December Term, 1864.

JOHN A. BLANCHARD, *Appellant*,
vs.
NATHANIEL J. BROWN, Administrator of the Estate of Benjamin F. Brown, deceased, NATHANIEL J. BROWN, WILLIAM S. BROWN, CALVIN JENKS, ANNIS A. JENKS, DANIEL B. BROWN, MARIA LEEK, JOSEPH BROWN, SARAH J. BROWN, LEMUEL BROWN, EDWARD A. BROWN, and HANNAH B. JANES, heirs of the said Benjamin F. Brown, *Appellees*.

ABSTRACT OF RECORD.

The bill in this case alleges that, on the 15th day of August, 1845, one Nathaniel J. Brown was the owner, in fee, of the south third of the west half, and the south two-thirds of the east half of Block Twelve, in the School Section Addition to Chicago, in the County of Cook and State of Illinois. That, in the year 1846, various judgments were recovered, in the courts of Cook County, against said Brown, which became liens upon the premises, and upon which they were sold, in 1848, on execution. The complainant derives title, through various mesne conveyances, from the purchasers at that sale. He alleges that actual and exclusive possession of said

premises was taken by his grantors in 1853, and maintained until their conveyance to him, and that he then took, now holds, and has continued to hold such unbroken possession.

The bill also alleges that, on the 15th day of August, 1845, one George W. Hart recovered a judgment in the Cook County Court against the said Brown, for $507.75 and costs. That on the 16th day of August, aforesaid, execution was sued out thereon and delivered to the sheriff of said County, who returned the same, on the 10th of February, 1852, unsatisfied. That on that day, Hart sued out, and delivered to the sheriff, an alias writ, by virtue of which the sheriff levied upon, and, on the 31st of March, 1852, sold said premises to Calvin Jenks, for $71.20. That, on the 20th of October, 1853, Cyrus P. Bradley, then sheriff of said County, executed his deed for said premises [illegible] said Jenks, who, on the 18th day of August, 1855, sold and conveyed them to Benjamin F. Brown.

It is charged that the sale under said judgment was fraudulent and void, and that complainant ought to be allowed to redeem therefrom.

The bill further charges, as evidence of the fraud and irregularities of such sale—

First. That on or about the 9th of February, 1852, and nearly seven years after the rendition of said judgment, and after the premises aforesaid had greatly increased in value, and more than four years after the sale thereof, in 1848, under which the complainant claims, the said judgment debtor, Nathaniel J. Brown, with the fraudulent intent to defeat the complainant's title, and not with the intent in good faith to pay, or cause to be paid, said judgment, applied to Messrs. Arnold & Lay, who had been the attorneys of said Hart, for the purchase of said judgment. That said Brown entered into

negotiation, professedly, on behalf of Calvin Jenks, of Owego, in the State of New York, who is a brother-in-law of said Nathaniel J. Brown. That, as the result of such negotiations, and without the authority of said Hart, or his assent thereto, an agreement was entered into, between the said Brown and said Arnold & Lay, in the words and figures following:

"GEO. W. HART,
vs. } Judgment $507.75. Aug., 1845.
N. J. BROWN.

We hereby agree, in consideration of fifty dollars, received of Calvin Jenks, of Owego, New York, that we will endeavor to procure an assignment of above judgment to said Jenks, and that in meantime we will hold and use the same for benefit of said Jenks, he paying all costs and expenses of any proceedings to collect the same, and at his request and costs, we will discharge the same in full. If anything shall be realized on said judgment after this date, said Jenks to have benefit thereof.

ARNOLD & LAY,
Att'ys for Geo. W. Hart.

FEBRUARY 9, 1852."

That whatever money was paid upon the execution of said agreement, was paid by the said Nathaniel J. Brown.

Second. That in pursuance of such arrangement, and with the fraudulent purpose of divesting and defeating the title under which the complainant claims the fee, the said Brown caused the sale of said premises upon a writ of *fieri facias* issued upon said judgment in favor of said Hart, and purchased and paid for the same, professing to act for the said Calvin Jenks.

Third. That although a writ of *fieri facias* had been issued on said judgment in favor of said Hart, on the 16th of August, 1845,

premises was taken by his grantors in 1853, and maintained until their conveyance to him, and that he then took, now holds, and has continued to hold such unbroken possession.

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FEBRUARY 9, 1852."

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Second. That in pursuance of such arrangement, and with the fraudulent purpose of divesting and defeating the title under which the complainant claims the fee, the said Brown caused the sale of said premises upon a writ of *fieri facias* issued upon said judgment in favor of said Hart, and purchased and paid for the same, professing to act for the said Calvin Jenks.

Third. That although a writ of *fieri facias* had been issued on said judgment in favor of said Hart, on the 16th of August, 1845,

yet the same was not returned to the Court from which it issued until the 10th of February, 1852, a space of nearly seven years from its date, and nearly four years after the sale on the judgments under which the complainant claims title, and after the arrangement of said Nathaniel J. Brown to obtain control of the said judgment, and complainant submits that the purchaser upon such prior sale had a right to presume that such execution had been satisfied in full.

Fourth. That in order to conceal the fact of such sale, and to defeat the right of redemption therefrom, as complainant believes, the said Nathaniel J. Brown caused such sale to be made at an unusual place, to wit, at the sheriff's office, and the certificate thereof to be held from the record until such right of redemption was lost by the lapse of time, and filed the same on the 28th of October, 1853, and also caused the writ upon which such sale was made not to be returned to the office of the Court from which it issued, until the 10th of July, 1858, a space of six years after such sale.

Fifth. That the sale of said premises was made to the said judgment debtor—Brown professing to act for the said Jenks—for a grossly inadequate price; that said premises were sold for $71.00, whereas they were, at that time, worth at least $4,000 and that at the same time and on the same execution, other lands of said Brown, worth at least $7,000, were sold for $40. And complainant submits that such price was so greatly inadequate, that it is evidence of fraud in such sale.

Sixth. That said block was, at the time of such sale, partly sub-divided and wholly capable of sub-division, and that the same would have sold for a better price if it had been offered in parcels, and yet the same was sold en masse, wiithout division, contrary to the statute in such case made and provided.

It is further alleged that both Jenks and said Benjamin F. Brown had, at the time of their respective purchases, and from thence hitherto to have had full notice of all the irregularities in such sale, and the proceedings subsequent thereto, and that said Benjamin F. Brown acquired his pretended title by a deed from said Jenks, dated August 18th, 1855, and with full notice of the matters before stated; and, at the same time, and as a part of the same transaction, took an assignment of the said Hart judgment, in the words following:

"In consideration of the sum of one hundred dollars, to me this day paid, the receipt whereof is hereby acknowledged, I have assigned, set over and sold the within judgment to B. F. Brown, together with all the profits and benefits to be derived therefrom.

"Berkshire, New York, August 18th, 1855.

CALVIN JENKS. SEAL

"Signed, sealed and delivered in presence of
DANIEL L. JENKS.
EMILY C. JENKS."

The complainant states that he has offered to redeem from such sale, and prays that he may be allowed to do so upon equitable terms.

Benjamin F. Brown, who was a brother of Nathaniel J. Brown, died, leaving the said Nathaniel J. Brown, William S. Brown, Calvin Jenks, Annis A. Jenks, Daniel B. Brown, Maria Leek, Joseph Brown, Sarah J. Brown, Lemuel Brown, Edward A. Brown and Hannah B. Janes, his heirs at law. A bill of revivor was thereupon filed.

The answer of the defendants denies the averments of fraud and irregularity in the sale, sets up the title of Benjamin F. Brown as a bona fide purchaser of said premises on the 18th of August, 1855, without notice of any irregularity or fraud, *but does not deny the actual possession of the grantors of the complainant at the time of such purchase which is alleged in the bill.*

The answer also sets up a judgment in ejectment, in favor of Benjamin F. Brown, and against the complainant, recovered in December, 1862, and after the filing of the bill in this case, in which the *legal* title to these premises was in dispute, and insists that the said recovery and judgment at law is a bar. The answer is not sworn. The evidence in the case will be discussed at length in the argument.

ARGUMENT OF APPELLANT.

I.

The sale under which the appellees claim was made not for the purpose of paying the judgment of Hart, but for the improper and fraudulent purpose of divesting subsequent incumbrancers for the benefit of a party having no manner of interest in the payment of the debt, but acting adversely to the judgment creditor.

The testimony of Arnold and the written agreement between him and Jenks shows this fact conclusively.

I. N. Arnold was the attorney of Hart, who had left the State. Mr. Jenks, a brother-in-law of Nathaniel J. and Benjamin F. Brown, or Nathaniel J. or Benjamin F. Brown, applied to him to obtain control of the judgment. He says, "I had conversation either with N. J. Brown, or his brother Benj. F. Brown, or a Mr. Jenks, in regard to the judgment sometime before the issuing of the execution in 1852. Some one of those gentlemen, perhaps two of them, called at my office; I should think it was Mr. Jenks, and suggested that possibly something might be realized out of some remnants of N. J. Brown's property on the execution referred to. I replied, as nearly as I now remember, that the judgment had been standing a long time, and I regarded it as worthless—that I knew of nothing on which to levy, and if they could inform me of anything I should be glad. Either Mr. Jenks or Mr. B. F. Brown remarked that he thought there was some property *heavily encumbered*, but that the execution might be used to an advantage in perfecting a title to some heavily encumbered property, although it might be of no value to a third party, or outsider, or something to that effect. I do not remember anything else except that it was arranged that an execution should be issued." "I presume the execution which I have in my hand, and dated February 10, 1852, issued in pursuance of that arrangement. The memorandum partly erased 'Brown to pay costs' is in my handwriting. I do not think I know of my own knowledge who paid the costs upon that sale. I did not pay them. They were paid to the sheriff in my absence, according to the best of my recollection. I think either Mr. Jenks or Mr. B. F. Brown paid me the money on the execution. I do not know when the sale was made. I do not know where Hart was at the time of suing out this execution. I had not heard from him for a considerable time previous." "I have an impression that I gave to one of the Browns, or to Jenks, a written memorandum of the terms of the arrangement in regard to the judgment and execution." "I had no authority to give control of the judgment and execution to either of the Browns or Jenks, other than that of being the plaintiff's attorney of record," nevertheless, he executed the agreement set out at large in the bill.

This agreement is proved by the witness, Anson B. Jenks, (page 14 of record,) a son of Calvin Jenks, to have been in the possession of Calvin Jenks as one of his muniments of title, and to have been transferred to Benjamin F. Brown at the time of his purchase of Jenks, on the 18th day of August, 1855, by an endorsement of that date in Jenks' handwriting. Upon notice they do not produce the original, but it is clearly proved and identified. The witness made a copy of it, and caused it to be filed of record in the case of Hart *vs* Brown. Jenks thereupon under this agreement, sued out an execution and sold the premises in question and purchased at the sale.

Certain facts in reference to this transaction admit of no controversy:

a. That Jenks sought this arrangement not for the purpose of satisfying the judgment, but to divest subsequent incumbrancers.

b. That false representations were made that the property to be sold was heavily incumbered.

c. That Arnold had no authority to allow the judgment to be used for such a purpose.

d. That Jenks must have known the purpose and the want of authority from Hart, the owner of the judgment.

e. That one or both the Browns were parties to the design.

In the language of the Chancellor in the case hereafter cited, "It is impossible to wink so hard" as not to see that this is a use to which a judgment ought not to be put by an entire stranger to it.

The proposition of law applicable to this state of facts may be stated as follows; A sale of property on execution upon a valid judgment with the avowed object of defeating the property of third persons, is fraudulent and void.

Crary vs. Sprague, 12 Wend. 41.
May vs. May, 11 Paige, 203.

The case of Crary *vs.* Sprague, 12 Wend. 41, is remarkably analagous to the one under discussion. The plaintiff held a bill of sale of chattels subject to the lien of an execution. An arrangement was made by the judgment debtor and others to sell under the execution for the purpose of divesting the interest of the plaintiff.

The sale was held void, and the Court say "it would be discreditable to the administration of justice to give countenance to such a perversion of the judgment and process of the Court." No distinction in principle exists between such a sale of chattels and of real estate.

2. The sale was invalid for inadequacy of price.

The land was worth, at time of sale, $2,000, and was purchased by the party controling the judgment for $71, or about one-thirtieth of the value.

Mere inadequacy of price is not sufficient, without other circumstances, to invalidate a sale made under legal process, but, when the disproportion is enormous, slight additional circumstances will justify the presumption that the sale was fraudulent.

Allen vs. Stephanus, 18 Texas, 658.
Swope vs. Ardery, 5 Ind. 213.
Fullenwiden vs. Roberts, 4 Dev. and Batt, 278.
Benton vs. Shreves, 4 Ind., 66.
Nesbitt vs. Dallum, 7 Gill and J., 494.
Howell vs. Baker, 4 Johns' Ch., 118.
Doe vs. Routledge, 2 Cowper, 705.

The case of Allen *vs.* Stephanus, 18 Tex., 658, was a judicial sale for one-twentieth of the value. It was said that the inadequacy of price paid was so enormous that slightly additional circumstances would justify the inference of fraud. The sale was set aside in a chancery proceeding, by petition, although a subsequent purchaser had intervened.

In the case of Nesbitt *vs.* Dallum, 7 Gill and J., 494, a judicial sale had been made for one-fifth of the value of the land. It was held to furnish intrinsic evidence of irregularity, impropriety and unfairness in the sale, and it was set aside.

The case of Swope *vs.* Ardery, 5 Indiana, 213, was a sheriff's sale for one-tenth of the value. Held void for inadequacy.

In the case of Howell *vs.* Baker, 4 Johns' Ch., 118, a party was allowed to redeem, in chancery, from a sheriff's sale, for gross inadequacy, and after the lapse of many years.

In the case of Doe *vs.* Routledge, 2 Cowper, 705, the question arose whether a purchaser for £200 of an estate worth £2,000 was a bona fide purchaser, within the meaning of the statute 27 Eliz., c. 4. Lord Mansfield says: "The consideration was so inadequate as to show that the transaction was a gross fraud, and no purchase at all."

The same question arose in the case of Fullenwiden *vs.* Roberts, 4 Dev. and Batt., 278, and the effect of great inadequacy of price upon a sale is fully discussed, upon principle, by C. J. Ruffin.

3. The sale was made en masse of property susceptible of subdivision. The premises contained about four acres, in a populous city. A part of the same block had been subdivided. This was clearly an irregularity.

Day vs. Graham, 1 Gilman, 442.
Jackson vs. Newton, 18 Johns', 362.
Groff vs. Jones, 6 Wend., 522.
McDonald vs. Neilson, 2 Cowen, 177, 189.
Lord Cranston vs. Johnson, 3 Vesey, jr., 170.
Woods vs. Monell, 1 Johns' Ch., 505.
Rowley vs. Webb, 1 Binn., 61.

There are various minor irregularities of great weight in determining the validity of a speculative title, as against parties who have been in possession for a period almost sufficient to support a plea of the statute of limitations.

a. The sale was advertised to take place between the hour of nine and sunset. This is a very uncertain time, and does not meet the requirements of the statute which provides that the time of sale shall be advertised.

Vide *Rev. Statutes of Illinois, page 302.*
Am. Ins. Co. vs. Oakley, 9 Paige, 260.
Brown vs. Frost, 10 Paige, 243.

b. The execution recites a judgment of the Cook County Court of Common Pleas. This Court was not in existence until some years after the rendition of the judgment. The Cook County Court, in which the judgment was recovered, was changed to the Cook County Court of Common Pleas by an act of the legislature in 1849. The advertisement doubtless followed the execution.

c. The certificate of sale was not filed in the recorder's office until October 28th, 1853, after the time of redemption had expired, and after the sheriff had executed a deed.

d. The execution was not returned until 1858. It is probable that the purchaser was a party to this delay.

II.

The defendants do not sufficiently plead or prove the title of Benjamin F. Brown, as a bona fide purchaser.

It is understood by counsel that the decree dismissing the bill in this case, was based upon the supposed rights of Benjamin F. Brown, as a bona fide purchaser, without notice. It becomes necessary, therefore, to consider this matter fully.

First. The defendants should have denied the possession of Mills, the grantor of the complainant, at the time of Brown's purchase, which is averred in the bill.

Particular facts of notice must be denied in the answer, as specially as charged in the bill.

Pennington vs. Beechey, 2 S. & S., 282.
Anon, 2 Ch. Ca., 161.
Price vs. Price, 1 Vern., 185.
Hardman vs. Ellames, 5 Sim., 650.
3 Atk., 815.
2 Vesey, jr., 187.
4 Bro. C. C., 322.
2 My. & K., 732.
2 Vesey, 430.
Boone vs. Chiles, 10 Pet., 177.

Second. The answer should have been sworn. This is requisite to support a plea that the defendant is a purchaser for valuable consideration without notice.

Sugden, 507.
Marshall vs. Frank, 8 Pre. Cha. 480.

The rule of this Court, No. 39 of Rules in Equity, permitting such defence to be made by answer, does not dispense with such oath.

Third. The answer should have averred that Jenks was seized in fee or pretended to be seized.

2 Atkins, 397.
2 Atkins, 631.
Story vs. Lord Windsor, 3 P. Wms. 279, 281.

Head vs. Egerton, 1 Vern., 246.
Trevanian vs. Morse, 3 Vesey, jr., 226.
Ib., 32.
Ambler, 421.
Boone vs. Chiles, 10 Pet., 177.

In all these particulars the answer is defective, and under it, this defence cannot be made.

Notice of the equitable title of the complainant was fully proved.

First. Mills, the remote grantor of the complainant, was in actual possession at the time of Brown's purchase, and such possession has been continued by the complainant, which is notice of his equitable title which cannot be explained away or rebutted.

LeNeve vs. LeNeve, 1 vol., pt. 2, White and Tudor's Leading Cases in Equity, 117.
Rupert vs. Marks, 15 Ill., 540.
Williams vs. Brown, 14 Ill., 200.
Bradstreet vs Huntington, 5 Pet., 402.
Dyer vs. Martin, 4 Scam., 146.
Robinson vs. Rowan, 2 Scam., 499.
Powell vs. Jeffries, 4 Scam., 387.
Sands vs. Brant, 10 Howard, 348.

Second. Brown, at the time he purchased the land, also took an assignment of Arnold's agreement with Jenks, and, therefore, is presumed to have had knowledge of the manner in which the judgment had been used. (Vide testimony of A. B. Jenks, pages 14 and 15 of record.)

III.

The defendants insist, in their answer, that a recovery in ejectment by Benjamin F. Brown, *after the filing of the bill in this case*, is a bar to the relief prayed for by the complainant. It is said that the same matters were set up in defence to that suit which are alleged in the bill as a ground of relief.

The reply is twofold:

First. The suit at law concerned only the *legal* title. The bill to redeem is based on an *equitable* one. The sheriff's sale was sufficient to pass the *legal* estate, and upon it the purchaser could maintain ejectment. It is altogether another question whether the sale was attended by such circumstances of fraud and irregularity as will induce a Court of Equity to relieve against its *legal* effect. The object of the action at law was to assert such paramount legal title. The object of this suit in chancery is to get rid of such title, by redemption. A mortgagee may recover upon his fee at law, but he cannot assert such recovery as a bar to redemption in chancery. Fraud will avoid a deed at law, only when it relates to the execution of it, but a recovery upon such a deed cannot be urged as a bar to a bill to compel the surrender and cancellation of it, for fraud in the consideration.

Dorr vs. Munsell, 13 Johns, 430.
Franchat vs. Leach, 5 Con., 506.
Champion vs. White, 5 Con., 509.
Dale vs. Roosevelt, 9 Con., 307.
Jackson vs. Hills, 8 Con., 290.
Stevens vs. Judson, 4 Wend. 471.

Slocum vs. Despard, 8 Wend., 615.
Osterhout vs. Shoemaker, 3 Hill, 513.
Belden vs. Davis, 2 Hall, 433.
Parker vs. Parmele, 20 Johns, 130.
Thompson vs. Drake, 32 Ala., 99.

A trustee may recover, in ejectment, against his *cestui que* trust, but such recovery would certainly not bar proceedings in chancery to assert the equitable title. "A court of law may indeed investigate some questions of fraud, and, when proved, treat a deed as a nullity, and conveying no title, as where a party was induced to execute a deed supposing it was another paper, but, in general, it will not go behind the naked legal title and inquire where the equities are." Vide *Reece vs. Allen, 5 Gil., 241*, decided in the State in which this case was tried, and which states the true rule upon this subject.

It will be found, upon analysis of the cases cited by counsel for the appellees, that they establish only the principle, which is not controverted, that a party cannot appeal from a judgment at law to a Court of chancery upon the relative merits of the *legal titles* involved in the controversy at law. Such is especially the case of *Ballance vs. Forsythe et. al., 24 How., 183*, in which the principle is accurately stated. Such is the case of *Miles vs. Caldwell, 2 Wallace, 36*, in which a Court of law had passed upon the validity of a deed alleged to have been fraudulent as against creditors, a matter over which Courts of law have always exercised jurisdiction. There was in this case no doubt about the power of the Court to administer full relief. In the State in which this case was heard, the distinction between Courts of law and chancery is fully maintained, and matter which furnishes no defence at law may be good ground for relief in chancery.

Second. It has been expressly decided in that State that such irregularities cannot be taken advantage of, collaterally, in the action of ejectment.

Swiggart et al. vs. Harber et al., 4 Scam., 375.

And such is, beyond question, the general rule of law.

It is believed that no case can be found in which a sale has been successfully attacked in *collateral* proceedings at law upon similar grounds.

CHARLES HITCHCOCK,
Solicitor for Appellant.

No 226

IN THE

Supreme Court of the United States.

December Term, 1865.

JOHN A. BLANCHARD, Appellant,

v.

NATHANIEL J. BROWN et al., Appellees.

BRIEF FOR THE APPELLEES,

By SAM. W. FULLER.

Beach & Barnard, 14 S. Clark Street.

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IN THE

SUPREME COURT OF THE UNITED STATES.

December Term, 1865.

JOHN A. BLANCHARD, *Appellant*,
v.
NATHANIEL J. BROWN, Administrator of the estate of B. F. BROWN, deceased, NATHANIEL J. BROWN, WILLIAM S. BROWN, and others, *Appellees.*

BRIEF FOR THE APPELLEES.

The appellant filed a bill in equity against the appellees to set aside an execution sale of certain parcels of land in Chicago, Illinois, under which the appellees claimed title to the premises in controversy, on the ground of fraud in making the sale, and offered in his bill to pay the amount, with interest, for which it was sold. (Printed record, pp. 1 to 7.)

The bill was filed against Ben. F. Brown, who died during the progress of the cause, and before making an answer to the bill, and the appellees, who are his heirs at law, were made parties defendant. (Rec., pp. 8, 9.)

The defendants set up, in their answer, three principal grounds of defence:

First. They denied that there was any fraud in the execution sale. (Printed record, p. 10.)

Second. They averred that Ben. F. Brown was a *bona fide* purchaser of the land, for a valuable consideration, from Jenks, who bought the property at the execution sale. (Printed record, p. 11.)

And, *Thirdly*—That in an action of ejectment, which Ben. F. Brown brought against the appellant, to recover the possession of the premises in question, the very same matters set up in the bill to avoid the execution sale were offered in evidence for the appellant, as a defence to that suit, and were received and fully considered by the court and jury, the latter finding the issues of fact againt the appellant; so that the judgment in ejectment was a bar to the present suit. (Printed record, pp. 11, 12.)

The court below decreed in favor of the appellees, and the case is brought here for a review of that decision.

The appellees offered in evidence the record of the proceedings in the ejectment suit to support the third ground of their defence. (See pages 22, 23, 24, 25, and 26, of printed record.)

It appears on page 24, that a trial by jury was had in that case, and a verdict and judgment rendered in favor of Brown; and afterwards, as appears from page 26, another trial of the ejectment suit was had before the court, with the like result.

To show what evidence was offered in the trial of that action, to impeach Brown's title, the appellees offered in evidence on the hearing of this cause, the parol testimony produced by the appellant, Blanchard, on the trials of the ejectment suit, and it is set out on pages 26 and 27 of the printed record. The same witness, (ARNOLD,) testified, both in the action at law and in the present suit, and on both occasions he swore to substantially the same matters, as will fully appear by comparing what he said on the two occasions. (See pages 16 and 17, for his testimony in this case, and pages 26 and 27, for his testimony in the former trial.) There is no substantial difference between the two statements.

James H. Rees' testimony in the ejectment suits will be found on page 27 of the printed record. The only point of it was to show a great sacrifice of the property at the execution sale. It was agreed in the present case, that he had so testified, and would do so again, if called to the stand. (See page 33, record; 13, printed record.)

The only additional evidence offered by the appellant in support of his bill to that given on the trial at law, was that of Jenks, (pages 14 and 15 printed record,) which was given against the objection of the appellees' counsel, that it was a violation of professional confidence, and ought not to have been given, nor should it be considered by the court; at the same time his evidence does not, in the slightest degree, tend to impeach the execution sale. But it ought not to have been given at all.

We, therefore, submit that the appellees fully proved their defence of a former recovery upon the merits and strength of the title litigated in this suit, and, having had a full opportunity of testing his rights in a court of law, the appellant is concluded by the recovery and judgment against him.

The case, in this particular, cannot be distinguished from those of

Miles v. *Caldwell*, 2 Wallace, 35.
Ballance v. *Forsyth*, 24 Howard, 183.
Van Wick v. *Seward*, 1 Edwards Chy., 327.

It is apparent that appellant resisted Brown's recovery in the action of ejectment on the ground of fraud in the execution sale, and because of the very low price, as is alleged, which the property brought at that sale; and on the authority of the cases cited above, he is bound by the result of the action at law. He took all the risks of making his defence in that court; two judgments were rendered against him, and then he filed his bill in this case. This was too late.

The 29th section of the 36th chapter of the Revised Statutes of Illinois, 1845, entitled "Ejectment," is as follows:

"Every judgment in the action of ejectment, rendered "upon a verdict, shall be conclusive as to the title established, in such action, upon the party against whom the "same is rendered, and against all persons claiming from, "through, or under, such party, by title accruing after the "commencement of such action, subject to the exceptions "hereinafter named."

This is a broader statute than that of Missouri, which the court held, in the case of *Miles* v. *Caldwell*, 2 Wallace, 44, to be conclusive upon the parties who had litigated their respective titles in a court of law. In that case, as in the present one, the question of fraud had been submitted to the jury, and determined against the complainant. The appellant comes here with substantially the same evidence, from the same witnesses, and for the same purpose, that he employed in resisting the action at law, and ought, by the express terms of the Illinois statute, and the above cited decision of this court, to be bound by the verdict and judgment against him.

It is admitted by the appellant's counsel, that the grounds on which complainant's claim to equitable relief are based, were relied upon on the trial of the action of ejectment; but the effect of that proceeding as a bar to his right to resort to chancery, is denied, because, as it is said, only the legal title was involved in that action. This is fully answered by the opinion of this court in the case of *Miles* v. *Caldwell*, *supra*, pages 39, 40.

Had the complainant wished to preserve his right to litigate the respective titles of himself and Brown, in a Court of Chancery, he should have filed his bill before a verdict and judgment had passed against him in the action of ejectment. But he took the chances of two trials at law, in both of which he was defeated; and then, at the same term of court at which the final judgment was rendered, filed his bill in this cause, which abated by the death of Brown, and was afterwards revived, in its present form, against Brown's heirs. This was too late; for he had had his day in court, and ought to be concluded by the result of it.

Second. There is no proof of fraud in making the sale on the execution. The bill states that N. J. Brown owned all the property in dispute, whereas the proof was that he owned only an undivided half of it. (See the stipulation, p. 33, printed record.)

The case was this, as shown by the proof: N. J. Brown, in 1845, owned an undivided half of the premises in question, and several judgments were recovered against him, which, in their order, became liens on his estate, The appellant derives title by execution sales of the land under the junior judgments against Brown, while the defendants' title is founded upon a sale under an execution issued on the senior judgment, which was the oldest lien on the premises. An execution was regularly issued upon that judgment, while it was in full force, and the property levied on, advertised, and sold to Calvin Jenks, (printed record, p. 13,) and a sheriff's deed made to him in pursuance of that sale. (Printed record, p. 27.)

It is not denied that the judgment was in full force, wholly unpaid, and the oldest lien on the property, or that the execution was regularly issued, levied, and returned; but it is insisted, on behalf of the appellant, that the sale was void for fraud and for irregularities.

The only irregularity insisted on is, that the hour of making the sale was not definitely fixed in the advertisement.

The notice was sufficient, in form and substance, under the statutes and decisions of the State of Illinois.

Revised Statutes, 1845, p. 303, sec. 11.
Trustees of Schools v. *Snell*, *et al.*, 19 Illinois, 157.

The main ground of complaint about the sheriff's sale is the sacrifice of the property. This was a matter of which the defendant in the execution, and not third persons, could complain; but the case shows there is no foundation for it in fact.

The answer of the defendants states that the title to the property was involved at the time of the sale, and that was the reason it brought so small a sum. (page 10. printed record.) It was agreed that J. H. Rees had testified in this cause that the whole property was worth $4,000, at the time of the sale. (Page 13, printed record.) By turning to the report of his testimony on the trial of the ejectment suit, it appears that his "estimate of the value "was based on a good title, and no encumbrance of the "entire" (page 27, printed record); and on turning to the report of Mr. Arnold's testimony in this case, on pages 16 and 17 of the printed record, we find he swore that he regarded the judgment as worthless, until either Jenks or Brown told him, "there was some property heavily en-"cumbered, and that the execution might be used to "advantage in perfecting the title to it, although it was of "no value to third parties."

This is all the pleading and proof relating to this point, and it fails to show there was any sacrifice of the property at that sale. Brown was heavily indebted, as the records of this case show by the numerous judgments against him. Neither his creditors, nor their attorneys, knew how, or where, to make any part of their judgments against him, except by the sale of this heavily encumbered property.

In every case cited by the appellant, in support of this ground of attack upon the sheriff's sale, it appears that direct proceedings were instituted to set aside the sale, or that the purchaser at the sale still held the title acquired under it, either for his own benefit or as trustee. But in this case, Jenks bought this "heavily encumbered prop-" erty," and waited the fifteen months allowed by law to redeem from his purchase, and no one appeared to do so, when he received the usual sheriff's deed for the land, as appears on page 27 of the printed record. This vested in him the legal title, which he held for two years, when he conveyed that, and other property, to B. F. Brown, the ancestor of the appellees.

This brings us to consider the third ground of defence to this suit, and that is, that B. F. Brown was a *bona fide* purchaser, for value, of the premises in controversy, from Calvin Jenks.

The appellees, in their answer, deny that there was any fraud or irregularity in the sheriff's sale, and insist that such sale vested in Jenks a good title to the premises in controversy (page 10, printed record); and on page 11 they set up, by way of further defence, that on the 18th day of August, 1855, (three years after the sheriff's sale,) Jenks sold and conveyed that and other property to B. F. Brown, for three thousand dollars, cash, and deny that B. F. Brown had any notice or knowledge of any defect in the title which he thus acquired from Jenks. This defence is set up with all the formality and particularity required by the decisions of this court.

Boone v. *Chiles*, 10 Peters, 211.

The deed from Jenks to Brown is set out on page 29 of printed record, and the proof of the payment of the consideration was fully made by the deposition of Daniel L. Jenks (pages 28, 29), who counted the money which was paid by Brown for the conveyance. This ground of defence is thus well pleaded and fully proved, and should prevail.

But it is insisted for the appellant that Brown had notice of the proceedings under the judgment at law. There is not a word of proof that he had; and the inference is rested upon the fact that, because he bought the judgment of Hart v. Brown, as appears on page 16, printed record, that he knew of everything which had been done, under or by virtue of it. Suppose he did; he would then only know that it was the oldest lien on the defendants' land; that an execution had been regularly issued upon it; and that a sheriff's sale of some "heavily encumbered property" of the defendants had only produced a very small sum; that no redemption was made from it; and that Jenks had received, and held for two years, a sheriff's deed of the land which had been sold. There was no law against buying the judgment; and no fair inference can be drawn from the fact of buying it, that he knew, or was bound to know, all, or anything, that had been done under it.

But, it is insisted, that appellant's possession, or the possession of those under whom he claims title, was notice to Brown of their title; but even if it was, their title was derived from judgments and proceedings of record junior and subject to those under which Jenks had title. It was only notice of a confessedly weaker legal title than his own, as has been shown on two trials at law, and one in equity. It is difficult to understand how a title under a senior judgment is weakened by notice to the holder that

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somebody else claims title, and has possession even, under a junior judgment. And that is precisely the case before the court: the appellant, and those under whom he claims title, derive their title from the junior judgments against N. J. Brown, while Geo. W. Hart's judgment was the oldest and paramount lien on the premises in question, and he had the legal right to enforce it against those premises to the exclusion of the junior judgment creditors, for the period of seven years from the last day of the term at which it was rendered.

Rev. Stat. of Illinois, 1845, chap. LVII, secs. 1 and 2.

There is no pretence that the execution on which the premises were sold, was either irregularly or clandestinely issued, and the sale not fairly advertised, as required by law, so that the only relief for the holders of the junior judgments was to redeem from that sale, under the provisions of the 14th and 15th sections of the above cited Statute of Illinois.

This they did not do, and never have attempted, until appellant commenced this suit, eleven years after the sale was made, and during three years of that time he has been unsuccessfully resisting it in a court of law. He has not proved any offer to pay the money for which the property was sold, nor shown that N. J. Brown ever had title to but an undivided half of the property; so that on the grounds, both of variance and lack of proof of any offer on his part to do equity, his suit ought to fail, as it did.

But, it is insisted for the appellant, that the failure to return the execution on which the sale to Jenks was made is either an evidence of fraud in making the sale, or was an omission which invalidated the purchaser's title

The deed from Jenks to Brown is set out on page 29 of printed record, and the proof of the payment of the consideration was fully made by the deposition of Daniel L. Jenks (pages 28, 29), who counted the money which was paid by Brown for the conveyance. This ground of defence is thus well pleaded and fully proved, and should prevail.

But it is insisted for the appellant that Brown had notice of the proceedings under the judgment at law. There is not a word of proof that he had; and the inference is rested upon the fact that, because he bought the judgment of Hart v. Brown, as appears on page 16, printed record, that he knew of everything which had been done, under or by virtue of it. Suppose he did; he would then only know that it was the oldest lien on the defendants' land; that an execution had been regularly issued upon it; and that a sheriff's sale of some "heavily encumbered prop- "erty" of the defendants had only produced a very small sum; that no redemption was made from it; and that Jenks had received, and held for two years, a sheriff's deed of the land which had been sold. There was no law against buying the judgment; and no fair inference can be drawn from the fact of buying it, that he knew, or was bound to know, all, or anything, that had been done under it.

But, it is insisted, that appellant's possession, or the possession of those under whom he claims title, was notice to Brown of their title; but even if it was, their title was derived from judgments and proceedings of record junior and subject to those under which Jenks had title. It was only notice of a confessedly weaker legal title than his own, as has been shown on two trials at law, and one in equity. It is difficult to understand how a title under a senior judgment is weakened by notice to the holder that

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under the sale. This was a matter with which Jenks had nothing to do. He depended on the judgment, the levy, and the deed. All other questions are between the parties to the judgment and the marshal (or sheriff).

Wheaton v. *Sexton*, 4 Wheaton, 503.
Phillips et al. v. *Coffee*, 17 Illinois, 154.

It is farther urged for the appellant, that a large tract of land was sold *en masse*, when it could have been easily subdivided, and a small part of it sold to satisfy the execution. To this it is replied, that the land was sold in its then condition. It had not been subdivided, and it was not the sheriff's business to subdivide it. The whole tract was "heavily encumbered," as Mr. Arnold says, and it does not appear that it was worth more than was bid for the whole, subject to the encumbrances. And, finally, it was for the judgment debtor alone, and not for others, to complain of a sale *en masse*. It was his property, and not his creditors', that was sacrificed by such a proceeding, and their rights were simply and only to pay off the elder judgment, or redeem from a sale under it.

It appears from the evidence (printed record, p. 12), that in 1852, D. B. Brown and N. J. Brown conveyed the premises in controversy to Calvin Jenks. This gave him a good title to an undivided half derived from D. B. Brown, and he, therefore, was naturally anxious to perfect his title to the residue, by buying in the judgments which were liens upon it. He purchased the eldest one of respectable attorneys of the plaintiff, who has never made any complaint of their action, and made a sale under it, which proceeding ripened into a sheriff's deed; and thus he became vested with the full legal title to the premises, which passed to B. F. Brown by his deed of Aug. 18, 1855, (page 29).

The decree below, by a court which had three times heard the whole matter, was right, and ought to be affirmed for the following reasons.

I.

The proof wholly fails to sustain the case made by the bill. N. J. Brown did not own such an estate as it is alleged he did; nor has the complainant shown any offer to do equity on his part.

Wright v. *McNeely*, 11 Ills., 241.

II.

The defence of a former recovery, by Brown against the appellant, in an action of ejectment brought for the recovery of the property in question, is fully made out in the evidence, which shows further, that the same attack upon the judgment title was made in that case, as in this, and failed.

Miles v. *Caldwell*, 2 Wallace, 36.

III.

Brown was a *bona fide* purchaser from Jenks for a valuable consideration, proved to have been actually paid. This should protect the appellees, who hold under him as his heirs at law.

IV.

None of the alleged irregularities in the sheriff's sale, or all of them together, prevented its being effectual to pass the legal title to the purchaser at the sale, as was directly determined in the ejectment suit; which is conclusive upon the appellant, and those claiming under him.

Illinois Rev. Statutes, 1845.
Chapter "Ejectment," sec. 29.

SAM. W. FULLER,

Counsel for Appellees.

CHICAGO, Dec. 12, 1865.

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